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In The

SUPREME COURT of the UNITED STATES

October Term, 1976

No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC.,
a Minnesota Corporation
and

CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE, a Delaware
Corporation,

Appellants,

vs.

ZEL S. RICE, ROBERT T. HUBER,
JOSEPH SWEDA, REBECCA YOUNG,
WAYNE VOLK, LEWIS V. VERSNIK, and
and BRONSON C. LA FOLLETTE,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the United States District Court for the Western District of Wisconsin entered August 13, 1976, denying an injunction against a provision of the Wisconsin Administrative Code which bans 65-foot twin trailer vehicle combinations from conveying general commodity shipments in interstate commerce on Interstate Highways in Wisconsin. Appellants

submit this statement to show that the Supreme Court of the United States has jurisdiction and that^a substantial federal question is presented that merits plenary consideration for its resolution.

OPINION BELOW

The memorandum opinion of the District Court for the Western District of Wisconsin is not yet reported. A copy is set forth as Appendix A hereto.

JURISDICTION

This action was brought under 28 U.S.C. §§ 1331, 1332, 1343, 2201 and 2202, and 42 U.S.C. § 1983 to invalidate and enjoin enforcement of a regulation of the State of Wisconsin which bans the use of twin trailer vehicle combinations on Interstate Highways. The state regulation was alleged to violate the Commerce Clause and the Fourteenth Amendment to the United States Constitution.

On August 13, 1976, the three-judge Court granted judgment for the defendants. Notice of Appeal was filed by appellants on September 29, 1976, in the United States District Court for the Western District of Wisconsin. A copy of the Notice of Appeal is set forth in Appendix B.

Jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. § 1253.¹

¹28 U.S.C. § 2281, which mandated a three-judge court in this case has been repealed, but it does not affect the requirement of direct appeal to the Supreme Court for cases commenced before August 12, 1976, Pub. Law 94-381 (August 12, 1976).

The following cases sustain such jurisdiction: *South Carolina State Highway Dept. v. Barnwell Brothers, Inc.*, 303 U. S. 177 (1938); *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U. S. 361 (1964); *Florida Lime and Avocado Growers, Inc. v. Jacobsen*, 362 U. S. 73 (1960); *Herkness v. Irion*, 278 U. S. 92 (1928).

STATUTES AND REGULATIONS INVOLVED

§ Hy 30.14(3)(a), WISCONSIN ADMINISTRATIVE CODE, reads as follows:

(a) Trailer-train permits shall be issued only for the operation of vehicles used for the transporting of municipal refuse or waste, or for the interstate or intrastate operation without load of vehicles in transit from manufacturer or dealer to purchaser or dealer, or for the purpose of repair.

Other relevant statutes and regulations are set forth in Appendix B.

QUESTIONS PRESENTED

A. Does Wisconsin's refusal to permit twin trailers on the Interstate Highways in Wisconsin violate the Commerce Clause by placing a burden on interstate commerce which outweighs any legitimate local interest?

B. Does the Wisconsin regulatory scheme for vehicles unconstitutionally discriminate against interstate commerce?

STATEMENT OF THE CASE

This suit was brought before the District Court for the Western District of Wisconsin challenging the constitutionality of a Wisconsin Highway Commission regulation insofar as it prohibits the use of 65-foot twin trailer vehicles on the Interstate Highways in the State of Wisconsin.² This prohibition causes Wisconsin to be an "island", imposing an artificial and unnatural barrier to twin trailers which are otherwise permitted the length of the principal interstate route from Detroit to Seattle. The barrier thus created disrupts and fragments the national system for the interstate transportation of goods. Carriers,

among other alternatives, are forced to maintain staging areas at the Wisconsin borders for the purpose of dividing twin trailer combinations for transport through Wisconsin as single units and for recombining them at the opposite border. The factual evidence presented to the District Court showed the ban to be unsupported by safety or other legitimate concerns of the State.

By statute and administrative regulation Wisconsin generally prohibits vehicles in excess of 55 feet in length and vehicles having more than one trailer. Under a complex permit system, the Highway Commission, however, can and does, under various grants of power, routinely issue several types of permits for the operation of oversized vehicles up to 85 feet in length and vehicles having more than one trailer. Were it not for § Hy 30.14(3)(a) the Highway Commission would have the power to grant permits to Plaintiffs for the operation of 65-foot twin trailers and limit such operation to the Interstate Highways.

Plaintiff Consolidated Freightways Corporation of Delaware is a large general commodity carrier, operating in 45 states under authority granted by the Interstate Commerce Commission. Plaintiff Raymond Motor Transportation, Inc. is a small general commodity carrier which has Interstate Commerce Commission authority to pick up and deliver freight in the states of Illinois, Minnesota,

²The twin trailer vehicle combination at issue here consists of a tractor and two 27-foot trailer units. The first trailer is attached to the tractor in a manner similar to that of a conventional semi-trailer. The front of the second unit rides upon a dolly attached to the rear of the first. The District Court's opinion has appended to it illustrations of the vehicle in question. Such a vehicle is a "trailer-train" or "double bottom" under Wisconsin's definitions.

Because shorter trailers are less stable, 27-foot trailers have become the industry standard. The length of two 27-foot trailer units and a tractor is 65 feet.

and North Dakota. Where permitted, both plaintiffs utilize twin trailer vehicles in their operations. Both plaintiffs applied for permits to operate twin trailers on designated four-lane Interstate Highways in the State of Wisconsin. Both plaintiffs were denied permits on the basis of § Hy 30.14(3)(a) which prohibits the granting of permits for trailer trains except for specified purposes. Plaintiffs thereupon brought suit in District Court to enjoin enforcement of § Hy 30.14(3)(a) as a state regulation violating the Commerce Clause and Fourteenth Amendment of the United States Constitution. This suit is confined to the use of twin trailers on Interstate Highways (and connecting roads) which are principal channels of interstate commerce in and through Wisconsin.³ A three-judge court was duly impanelled and on August 13, 1976, entered an order refusing to enjoin enforcement of § Hy 30.14(3)(a).

³The highways in question are Interstate Highways 90, 94 and 894. Interstate 94, in conjunction with Interstate 90, provides a four-lane, limited access highway from Detroit, Michigan to Seattle, Washington. Twin trailers are permitted the length of Interstate 94 save for the segment in Wisconsin. Interstate 894 is an alternate or by-pass route in Milwaukee County, Wisconsin. Both Interstate 90 and 94 run from the southern border of Wisconsin in a generally northwesterly direction to Wisconsin's western border with Minnesota. Plaintiff Consolidated Freightways also requested permits to operate twin trailers on four-lane connecting roads to two Wisconsin terminals immediately adjacent to the Interstate Highways.

⁴By stipulation of the parties, trial in the District Court was upon deposition, affidavits and exhibits. No live testimony was heard by the District Court. The District Court's opinion does not contain detailed findings of fact separate from its conclusions. If this Court deems it necessary it may remand for further specific findings of fact, or may determine the undecided questions itself from the record, *Gerdes v. Lustgarten*, 266 U. S. 321, 327-328 (1924), *McCardle v. Indianapolis Water Co.*, 272 U. S. 400 (1926). Inasmuch as plaintiffs sought injunctive relief, will sustain substantial financial and intangible damage as a result of delay, and inasmuch as the lower court did not rest its decision on the demeanor and credibility of the witnesses, it would be appropriate for this Court to follow the latter course.

The parties have caused their briefs in the District Court to be made a part of the record on appeal. The appendices to Plaintiff's Brief contain a summary of the numerous depositions, affidavits and exhibits on the issues in this case.

This Court has recently enunciated the test to be applied in determining whether a state statute or regulation is violative of the Commerce Clause of the Constitution:

Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. *Pike v. Bruce Church*, 397 U. S. 137, 142 (1970).

That test contains two elements: (1) the suspect statute or regulation must be non-discriminatory; (2) the burden on interstate commerce and the state's legitimate local interest must be determined, the two weighed, and the state's interest found dominant. The record below contains extensive testimony and evidence on discrimination, the burden on interstate commerce, and safety—the only local interest the state has raised—all indicating that the Wisconsin regulation is invalid under the *Pike* test.

Interstate general commodity carriage by truck has become the primary method of transporting general commodities in this country. The railroads no longer provide viable less than carload general commodity carriage. General commodity carriage requires that the carrier have the ability to combine small shipments from many shippers for long distance over-the-road shipment and to separate these shipments at a point near their destination for individual delivery to the consignees.

The combination of a tractor and two twin trailers offers advantages peculiar to these requirements of interstate carriage of general commodities. Because the two

trailers may be separated, they may be dropped off, picked up and interchanged individually.⁵ That ability permits many improvements in the quality and efficiency of service. Small towns which generate only 15,000 lbs. of freight can have regularly scheduled twin trailer service; 30,000 lbs. are required to provide the same service by semi-trailer. Twin trailer units can be loaded separately, combined at one terminal for over the road movement, and then be separated at another terminal and recombined with other twin trailers going to the same final destination, thereby avoiding expensive and time consuming loading and re-loading of cargo.⁶ Downtown deliveries and pick ups in congested areas can be made by a single twin trailer and tractor, rather than by loading and unloading cargo in a straight truck for delivery and pick up. Finally, twin trailers offer far greater opportunity for interchanging, thus improving the ability of a carrier to provide service to areas of the country he does not himself serve.

To accomplish the same movements of freight in semi-trailer equipment requires one or more unloadings and reloadings of the cargo. Loading and unloading dramatically increases costs, delays, and exposure of the freight to loss and damage.

A twin trailer vehicle combination has a cubic capacity greater than a common 55-foot semi-trailer vehicle. This added cubic capacity is of particular advantage to

⁵"Interchanging" in the terminology of the business is the practice of transferring entire trailers from one carrier to another. "Interlining" is the practice of transferring individual shipments to another carrier for transport in his equipment. In *Bibb v. Navajo Freight Lines*, 358 U. S. 520 (1959), this Court used the term "interlining" where "interchanging" would now be the accepted term.

⁶Actual examples of such movements by twin trailers introduced into evidence are summarized at pp. 56-57; 58-60, of Plaintiffs' Brief in the Court below.

general commodity carriers because the cargo they handle is low density, and becoming less dense with the advent of new light weight packaging materials such as styro-foam.⁷ General commodity carriers normally "cube out", i.e., fill the volume of the trailer, long before the vehicle approaches weight limits imposed by the state or federal government. Because of this increased volume, twin trailers further reduce loading and unloading cost, reduce highway traffic, and are more fuel efficient than the 55-foot semitrailer.⁸

The various steps taken by Plaintiff Consolidated Freightways to accommodate Wisconsin's ban of twin trailers illustrate the burden imposed by the ban. Consolidated Freightways maintains staging areas at the Wisconsin borders where twin trailers may be separated, an extra tractor supplied, and the trailers hauled as individual units through Wisconsin to the border where they are recombined. Where this dividing and recombining operation appears inadvisable, Consolidated Freightways operates 55-foot semi-

⁷In 1974, the average weight of Plaintiff Consolidated Freightways' shipments was 992 pounds, in the first half of 1975, 975 pounds. Approximately 44% of all shipments weighed less than 200 pounds, and 70.4% less than 500 pounds in 1974. Consolidated Freightways' average loading on a semi-trailer is about 33,112 pounds, on a twin combination, about 36,630 pounds. Both loadings result in a vehicle with a gross weight well under Wisconsin's 73,000 pounds maximum.

⁸The Federal Energy Administration has concluded that twin trailers offer fuel savings of 20% over semi-trailers for the low density loads transported by common carriers of general commodities. In regard to Wisconsin's ban, the FEA stated:

FEA's analysis shows significant potential for energy conservation through utilization of twin trailer combinations. Motor carriers of general commodity freight would be able to travel across Wisconsin by direct and efficient routings, and integrate and utilize uniform equipment in their operations east and west of Wisconsin. The ability to use twin trailer combinations on interstate routes through Wisconsin will permit motor carriers of interstate and intrastate commerce to utilize the most energy efficient equipment, reduce their costs, and eliminate unnecessary loadings and reloadings at the Wisconsin border. (Hemphill, Affidavit, p. 5)

trailers over an entire route, though twin trailers are legal over all the route save Wisconsin. In some cases to achieve the operating advantages of twin trailers, it will operate twin trailer combinations over circuitous routes through Missouri. Use of these alternatives imposes additional annual operating costs on Plaintiff Consolidated Freightways of more than two million dollars, but more importantly it results in a significant diminution of the quality and availability of general commodity transportation throughout Consolidated's system.

Additional costs and disruption of the transportation system occur because the tractor equipment for twin trailers is different than that for semi-trailers, chiefly in that a semi tractor has tandem drive axles, whereas a twin tractor has a single drive axle. Although difficult, it is possible for carriers to use semi equipment on a regional basis on the Eastern Seaboard and other adjoining states where twin trailers are not permitted. Wisconsin's geographic location, however, prevents accommodation on a regional basis.⁹ The resultant equipment incompatibility is a major problem for carriers, and limits their ability to operate as part of a national or even regional transportation system.

The State of Wisconsin has conceded that twin trailers do not cause increased wear and tear on the highways, and they have conceded that the interstate highway system is structurally adequate for twin trailers; they defend the state ban on twin trailers solely as a safety measure.

⁹Twin trailers are permitted in all the states through which the Interstate 90 and 94 route from Detroit to Seattle passes, save for Wisconsin. Interstate 90 and 94 form the principal northern east-west interstate routing. The appendix to Defendant's Brief in the Court below graphically illustrates those states not permitting twin trailers.

The evidence produced at trial on the issue of safety was uncontroverted and showed that there is no legitimate safety interest supporting the ban. All of the numerous expert witnesses who had opinions testified that twin trailers when compared to 55-foot semi-trailers were (1) more maneuverable, (2) remained in their lane better, (3) were more stable, (4) were less prone to jackknifing, (5) stopped as well or better under normal and adverse conditions, (6) produced less splash and spray, (7) were less prone to wind swaying, and (8) were in general as safe or safer. This expert opinion was buttressed by actual experience with twin trailers as reflected in statistical studies conducted by the United States Department of Transportation, Bureau of Motor Carrier Safety, and the California Highway Patrol. Both showed twin trailers to have a lower accident record than 55-foot semi-trailers. State officials who had had experience with twin trailers in their states¹⁰ testified by affidavit that they had experienced no safety hazard with twin trailers. No witness testified to the contrary, and no evidence to the contrary was introduced.

The Wisconsin regulatory scheme generally limits truck combinations to a maximum length of 55 feet, and bans twin trailer type combinations. There are, however, widespread exceptions to this regulation which operate for the benefit of Wisconsin based industries. Twin trailer operations are permitted, for instance, for the transportation of new twin trailers for sale or repair, there being a Wisconsin manufacturer of twin trailers, and for the trans-

¹⁰The states included Michigan, Minnesota, North Dakota, South Dakota, Montana, Wyoming, Idaho, Washington, Oregon, Colorado and Kansas.

portation of milk.¹¹ Overlength vehicles are specifically permitted in the case of utility pole carriers, mobile homes, implements of husbandry, pulpwood poles, automobile carriers, and vehicles "operating in connection with interplant and from plant to state line operations in this case."¹² The Highway Commission issues both general and special permits, which may be either annual or single trip permits. General annual permits are without limitation as to the number of trips that can be made.

The number of permits granted and the number of trips made under those permits is large. June 1, 1975 figures (which do not include the new dairy exemption and the expanded agricultural implement exemption),

¹¹The proposed regulations permitting transport of milk in 55-foot twin tank trailers were brought to the attention of the District Court at trial. The regulations, § Hy 30.18, 30.01(3)(c) and 30.01(3)(c) 2, Wis. ADMIN. CODE, became effective on July 1, 1976. The dairy industry did not need 65-foot vehicles because the volume of a 55-foot twin tank truck permits carriage at the maximum weight allowable.

¹²Appellant takes no exception to permitted over length uses that are uses of necessity, such as transport of utility poles. However, other permits are issued for economic reasons rather than physical necessity.

The Highway Commission is statutorily banned from granting permits where the load "... cannot reasonably be divided or reduced to comply with statutory ... limitations ...", Wis. STATS. § 348.25(4) (1973). The Commission candidly admits that it interprets "reasonably divided" in an economic sense; if it is uneconomical to split the load, it is unreasonable. (Huber Deposition, pages 11-12) (Weaver Deposition, pages 12-16) (Volk Deposition, pages 30-32, 35-38) Under this economic reasoning, oversize permits benefiting Wisconsin industries have been granted for physically divisible loads such as empty beer cans, car frames, car underbodies, car bodies, cars, empty twin trailers as a unit, boats, and agricultural equipment.

The record shows that the mobile and modular home industries began manufacturing oversized homes only after state assurances that oversized permits would be available. Thus, these permits are not of necessity.

The exemption for implements of husbandry was recently expanded beyond physical necessity to permit two implements to be transported on vehicles 60 feet in length. Thus, J. I. Case Company and Deere & Company, Wisconsin manufacturers of agricultural machinery, may use the exemptions in shipping their products, Wis. STATS. § 348.25(4)(b), (1975); Ch. 66 Laws 1975.

showed a total of 12,168 general permits (Plaintiffs' Request for Admissions). In 1972, there were a total of 20,703 single trip permits (Volk Deposition, Ex. 5). In 1975, 3,077 general permits were for 65-foot automobile transporters (Plaintiffs' Request for Admissions). The heavy usage of such general permits is indicated by the fact that one company with a fleet of only 52 automobile transporters operated 6,376,305 miles in Wisconsin in 1974 (Flippin Affidavit, Ex. JAF-B).

Under the interplant permit section, overlength permits have been granted for shuttle type operations on a continuous daily basis for vehicles carrying automobile frames, the transportation of empty beer cans, and a variety of other cargoes for the benefit of Wisconsin industries.

The District Court found the state's regulatory scheme to be non-discriminatory, apparently on the conclusion that the exemptions on their face are applicable to both residents and non-residents.¹³

¹³In so concluding in regard to interplant permits the District Court went against the clear weight of the evidence. Mr. Robert Weaver, the State Permit Supervisor, testified that interplant permits were an exception to a general policy of granting the same permits to residents and non-residents and were available only to manufacturers having a plant in Wisconsin or their agent motor carrier. (Weaver Deposition pp. 10-11, see also Volk Deposition, pp. 45-46). Defendant's Brief in the Court below conceded that these interplant permits were only available to manufacturers with a plant in Wisconsin. (Defendant's Brief, p. 7)

A SUBSTANTIAL FEDERAL QUESTION IS PRESENTED

Since the inception of this nation there has existed an inherent conflict in our federal system between the power of the states to regulate commerce for the protection and benefit of their citizens and the need for commerce between the states to be free and unhindered. The replacement of the Articles of Confederation with the Constitution was an immediate result of the Country's dissatisfaction with a resolution of that conflict in favor of the individual powers of the states.¹⁴ The Commerce Clause and this Court's interpretation of that clause have attempted to balance the two interests, a balance that found its last expression in this Court's statement in *Pike v. Bruce Church*, 397 U. S. 137, 142 (1970):

Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.

Free and unhindered interstate transportation of goods is the core of interstate commerce. Early in our history before the advent of motor carriage, this Court had construed the Commerce Clause to protect transportation from

¹⁴"The sole purpose for which Virginia initiated the movement which ultimately produced the Constitution was 'to take into consideration the trade of the United States; to examine the relative situations and trade of said States; to consider how for a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony' and for that purpose the General Assembly of Virginia in January of 1786 named commissioners and proposed their meeting with those from other states. Documents, *Formation of the Union*, H. R. Doc. No. 398, 12 H. Docs., 69th Cong., 1st Sess., p. 38." *H. P. Hood & Sons v. DuMond*, 336 U. S. 525, p. 533 (1949); see also, *THE FEDERALIST*, No. XLII.

burdensome individual regulation by the states, *semble*, *Gibbons v. Ogden*, 9 Wheaton 1 (1824); *semble*, *The Propeller Genessee Chief v. Fitzhugh*, 12 Howard 443 (1851); *Wabash St. Louis and Pacific Railway Co. v. Illinois*, 118 U. S. 557 (1886).

In 1938, a case arose under the Commerce Clause dealing with state regulation of motor vehicle size, *South Carolina State Highway Department v. Barnwell Bros.*, 303 U. S. 177 (1938). Rather than extending to motor carriage the same protection from burdensome and fragmented regulation provided to inland shipping and railroads under the Commerce Clause, the Court held that the states were free to regulate motor vehicle size so long as such regulation was non-discriminatory. In so doing, the Court rested its conclusions on facts that distinguished motor traffic from rail and water traffic.

In 1938, for all practical purposes, the construction and maintenance of roads, unlike that of waterways and railways, were an exclusive function of the states. The highways constructed in each state varied widely in their number, materials and design. Equally—and the two are intertwined in cause and effect—motor carriage of goods on roads was essentially local transportation; long distance transportation of goods by truck was virtually non-existent.

Moreover, on the facts of *Barnwell*, the danger to the State of South Carolina was immediate and obvious. Appellants in that case desired to place trucks 8 feet wide on highways which were 16 feet wide and incapable of supporting the weight. The Court concluded that motor transportation, unlike other transportation systems, was a matter "admitting of diversity of treatment" according to "the

special requirements of local conditions". There was no need for uniformity of regulation:

The fact that many states have adopted a different standard is not persuasive. The conditions under which highways must be built in the several states, their construction and the demands made upon them, are not uniform. *South Carolina State Highway Department v. Barnwell Bros.*, *supra*, p. 195.

The Court also believed that it saw a solution to the problem of regulation for local benefit which had inevitably occurred in the past when the states had had unbridled freedom to regulate commerce. If the Court required state regulation to be non-discriminatory, overly burdensome regulations would be politically checked by local interests suffering the same burden:

The present regulations, or any others of like purpose, if they are to accomplish their end, must be applied alike to interstate and intrastate traffic both moving in large volume over the highways. The fact that they affect alike shippers in interstate and intrastate commerce in large number within as well as without the state is a safeguard against their abuse. *South Carolina State Highway Department v. Barnwell Bros.*, *supra*, p. 187.

Twenty years later in *Bibb v. Navajo Freight Lines, Inc.*, this Court was presented with a situation where the logical scheme of *Barnwell* was ineffective. Illinois required all truck trailers travelling in Illinois to have a certain type of mudguard. The results of this seemingly innocuous non-discriminatory safety regulation were disruptive out of all proportion to the putative safety interest involved. Interstate carriers of cargo were forced either

to use this mudguard throughout their operations, or to stop at the Illinois border and weld on the mudguard required by Illinois. Interchanging of trailers, the process of transferring one trailer between different carriers used principally in interstate commerce, was disrupted.

The Court found the Illinois requirement to be unconstitutional. But it did not alter its decision in *Barnwell*, rather it treated the case as an aberration or exception to *Barnwell's* scheme of control:

This is one of those cases—few in number—where local safety measures that are non-discriminatory place an unconstitutional burden on interstate commerce. *Bibb v. Navajo Freight Lines, Inc.*, 359 U. S. 520, p. 529 (1959).

The circumstances, however, that caused this Court to find the Illinois regulation unconstitutional were not an isolated combination of circumstances unlikely to reoccur, rather they reflected basic changes in transportation. Motor carriage of goods was becoming a major method of long distance transportation. In 1938, South Carolina could regulate trucks in the state with only incidental regulation of interstate traffic. In 1959, the Illinois regulation had substantial effect on interstate carriers. The difference was not in the regulations but in the growth of the transportation system.

Moreover, the political check which the Court relied upon in *Barnwell* failed to operate. It failed, because the regulation, though on its surface non-discriminatory, was one which burdened only interstate carriage of goods without burdening the intrastate carrier. Absent a burden, local interests had no impetus to exert political pressure.

This case presents a similar but more egregious situation than that in *Bibb*. The motor transportation system has increasingly grown and expanded until it is now the principal transportation system for many commodities.¹⁵

Similarly, the road network has also grown and changed in its character. In 1938, a main trunk highway may have been designed to move produce from farms to their market at the county seat. Today, the Interstate Highways move California oranges to New York City. The Interstate Highways are federally financed, supervised, routed, designed and maintained to provide a national and regional transportation system. They are not less appropriate for state regulation because they are federally financed. They are less appropriate for state regulation because they are a major route of national commerce.¹⁶

Wisconsin's regulation of the vehicle size and type used by general commodity carriers disrupts and fragments the system because of Wisconsin's location and the routing of principal interstate routes through Wisconsin. Other states ban twin trailers; but these states, with the

¹⁵In 1972 out of 19 broad commodity groupings, trucks were the predominant transportation means (over 50%) for 16 commodity groupings. Excluding private trucks, for hire motor carriers were predominant in 9 commodity groups (1972 *Census of Transportation*, U. S. Bureau of the Census). On a ton-mile basis, motor carriage has increased from 40,000 million ton-miles in 1938 to 288,519 million ton-miles in 1959 and to 495,000 million ton-miles in 1974. *Fifty-Third, Seventy-Fourth, and Eighty-Ninth Annual Report to Congress of the Interstate Commerce Commission* (Government Printing Office, 1939, 1950, 1975).

¹⁶Plaintiffs' suit is limited to the use of Interstate Highways and connecting routes to adjacent terminals. Plaintiffs have not asserted that the ban is unconstitutional in respect to other highways on which local commerce may predominate. Permitting the use of twin trailers only on Interstate Highways is one of the "reasonable and adequate alternatives" which this Court has required the states to consider before unduly burdening interstate commerce, *Pike v. Bruce Church*, 397 U. S. 137, 142 (1970); *Dean Milk Co. v. Madison*, 340 U. S. 349, 354 (1951).

exception of Iowa,¹⁷ are contiguous and are located in the Southeast or Eastern Seaboard. They can be adjusted to on a regional basis. Wisconsin's geographic location and its location on Interstate 90 and 94 make it an island blocking the commercial routes from the industrial Midwest to the Pacific Northwest.¹⁸ The presence of the Great Lakes and the location of the Interstate Highways prevents any easy routing around Wisconsin. The result is a massive disruption and fragmentation of the system.

Because of Wisconsin's location its ban has extra-territorial effects on commerce traveling principally in states other than Wisconsin. On a small scale, Plaintiff Raymond Transportation is forced to use semi-trailers in Minnesota and Illinois, in order to join these two parts of its operations across the Wisconsin island. On a larger scale, the manufacturer in Detroit shipping to Seattle is forced to pay higher fares, and suffer delays, increased

¹⁷Iowa, which at the time of the trial did not permit twin trailers over 60 feet in length, has recently enacted administrative regulations permitting the use of 65-foot twin trailers on Iowa's highways. The administrative regulations are currently in abeyance as the result of a court decision holding the regulations to have been improperly promulgated. *Motor Club of Iowa v. Dept. of Transportation* (Dist. Ct., Scott County, Iowa, No. 56948, June 3, 1976).

Iowa's ban has never been the same deleterious effect on interstate commerce that Wisconsin's ban has had. Iowa through traffic can be easily rerouted through Missouri; Wisconsin's traffic cannot because of distance.

Carriers other than plaintiffs have in the past attempted to circumvent the Iowa ban, by paying the fines for oversized vehicles rather than curtailing their usage, e.g., *State ex rel. Turner v. United-Buckingham Freight Lines, Inc.*, 211 N. W. 2d 288 (Iowa 1973) (enjoining defendant motor carrier who had paid over \$30,000 in fines from continuing to violate Iowa's length limit).

¹⁸The industrial states of Ohio, Indiana, Michigan, Illinois, and New York which has east-west twin trailer service through the Province of Ontario, are significantly affected by Wisconsin's ban. In 1972, these five states had manufacturing shipments valued at \$250,394,000,000, approximately 33% of all the manufacturing shipments in the nation. (Data extracted from 1972 *Census of Manufacturers*, U. S. Census Bureau).

damage to freight, and poorer scheduling because his carrier cannot use twin trailers through Wisconsin. Large carriers such as Consolidated Freightways must attempt to accommodate incompatible equipment throughout their operations. Smaller carriers find their ability to interchange limited because of unsuitable or incompatible equipment. Small towns in states other than Wisconsin, which generate limited freight, find their service less frequent or non-existent because semi-trailers rather than twin trailers must be used.

The political check which this Court saw as a control of the state's regulation of commerce in *Barnwell* fails to function in this case just as it failed to function in *Bibb*. There are three reasons for that failure. First, the advantages that twin trailers offer are advantages that are of principal importance only to the long distance mover of general commodity freight. He is the only carrier who is faced with the problem of collecting freight from dispersed points, combining it with other freight for over-the-road shipment, and delivering it to dispersed points. He is the only carrier that needs the improved interchanging capability of twin trailers. Thus, the Wisconsin ban on twin trailers places a burden on interstate carriers while it does not place a corresponding burden on local carriers.

Nor is that burden on interstate commerce passed through to the local shipper in the form of increased costs. General commodity rates are set by rate conference bureaus which consider costs on a regional basis. Thus, the costs of Wisconsin's ban on twin trailers are spread over several states, and the added costs are paid not by Wisconsin shippers, but by shippers in other states as well. Pressure for political reform is thus attenuated.

Finally, the concept of discrimination applied by the lower court is too narrow. The District Court concluded that the Wisconsin regulatory scheme was non-discriminatory because it applied to both residents and non-residents. Though the Court recognized that the proper test for discrimination under the Commerce Clause comprehended not only the form of the regulation, but the result as well; it looked principally to the form to determine whether discrimination existed:

After thorough review of the position of each party the Court concludes that there is neither explicit nor implicit discrimination against interstate commerce through the statutory and administrative scheme in question here. No statute or regulation now at issue *expressly* focuses its impact upon interstate trucking operations. In practical effect, it seems apparent that the highways of the state of Wisconsin are controlled without regard to the interstate or intrastate nature of the commerce.

The record in this action does not reveal that by means of *these facially neutral* proscriptions the state of Wisconsin *intentionally* seeks to isolate local industry or agriculture from foreign competition. Opinion p. 7 (emphasis added).

The Court erred on the facts in failing to recognize that interplant permits were openly discriminatory. More importantly it failed to recognize the more subtle discrimination contained in the regulatory scheme.

Where the ban on twin trailers or on 65-foot trucks has placed a burden on Wisconsin industries, an exception has been created for that industry. That exception applies to local and interstate commerce alike, but the criteria for

granting exceptions insures their existence only where the exception is important to Wisconsin commerce. The legislature balances the economic and political importance of an industry with the state's desire in maintaining its ban. The inadvertent result is the discriminatory pattern of exceptions.¹⁹ Where the burden on local interests is great, an exception is created; where the burden is great on interstate commerce, but negligible on local commerce, as is the case with the ban on twin trailers, the legislature has no reason to remove that burden, particularly where the financial cost of the burden is spread over citizens of many states because of the rate structure.

¹⁹That the resultant exemptions are biased is demonstrated by the following table which shows the proportion of Wisconsin's total manufacturing shipments which are produced by the major Wisconsin industries granted or benefiting from exemptions other than interplant permits:

	% of Value of Wisconsin Manufacturing Shipments
Motor vehicles and equipment (65' motor vehicle transporters)	11.13
Mobile homes and Prefabricated Wood Buildings (overlength and overwidth permits)60
Dairy Products (55' twin trailer tank trucks for milk, the raw materials in dairy products)	9.88
Paper and allied products (beneficiaries of overlength and overweight permits for plpwood, the raw material in paper manufacture)	9.29
Farm Equipment (exemption for overlength loads of implements)	1.88
TOTAL	32.78

Thus a total of approximately 32% of Wisconsin's manufacturing shipments are possibly benefited by exemptions as to the size or type of vehicles permitted. The Wisconsin "bias" in exemptions can be seen by the fact that nationally these benefited industry groups create only 18% of all manufacturing shipments. (Data extracted from 1972 *Census of Manufacturers*, U. S. Census Bureau).

Defendants in their brief conceded that Wisconsin had fashioned its exemptions to benefit industries important to Wisconsin, arguing that the promotion of local industries was a proper exercise of the State's police power (Defendant's Brief pp. 8-10).

The evil is not one of intent, but is inherent in a federal system of government. Wisconsin has acted to further the perceived interests of its citizens, but in doing so it has neglected the interests of the nation in free and unimpeded interstate commerce. The constituency is too small: the viewpoint too narrow.

The factors that make the holding of this Court in *Barnwell* inapposite to the present facts were presented to the District Court. The District Court nominally applied the test of *Pike v. Bruce Church*, *supra*, to the facts of this case, but it did so in conjunction with this Court's holding in *Barnwell*. The result of such a combination is that the holding of *Pike v. Bruce Church* becomes without force.

Pike requires that the courts, on the facts of each case, weigh the burden on interstate commerce against the local interest. *Barnwell*, however, creates presumptions that when applied in the balancing operation, make it a futile exercise. *Barnwell* and other cases of its era, established the presumption that size is equated with safety, a presumption relied upon by the District Court:

The United States Supreme Court has on several occasions equated limitations on vehicle size to public safety. The opinions in these cases contain language which is quite broad; they demonstrate that for purposes of judicial review of state highway legislation, size restrictions might be deemed inherently tied to public safety. . . . [citing *Morris v. Doby*, 274 U. S. 135 (1927); *Minnesota Rate Cases*, 230 U. S. 352 (1913); and *Sproles v. Binford*, 286 U. S. 374 (1932).] Opinion, pp. 12-13.

The evidence in this case showed that presumption to be false, nonetheless the District Court considered itself bound by the presumption. Though the District Court spoke of "similar safety considerations" in its opinion, the only safety hazard it mentioned to support the presumption relied upon, was the supposed hazard of passing an additional ten feet of length. The only evidence introduced on the issue was that of expert witnesses who testified that in the context of an Interstate Highway the factor was "not significant." That expert opinion is congruent with common sense; an additional passing delay of a fraction of a second or even a few seconds is "not significant" on a four lane limited access highway, particularly when a twin trailer stays better in its lane and generates less splash and spray than conventional semi-trailers.

Barnwell also emphasized the presumption of validity attached to state statutes and that the matter of safety was essentially one for the state legislatures. Both presumptions influenced the District Court's opinion. Having applied these presumptions rather than the facts presented in evidence, the result of the balancing test was foregone, the District Court saw no necessity to examine or discuss the burden on interstate commerce other than to summarily conclude:

The burdens thereby imposed upon interstate commerce are not unconstitutional in scope or degree. Opinion p. 12.

In so doing, the District Court failed to apply the warning contained in *Bibb*:

Appellants did not attempt to rebut the appellee's showing that the statute in question severely bur-

dens interstate commerce. Appellants' showing was aimed at establishing that contour mudguards prevented the throwing of debris into the faces of drivers of passing cars and into the windshields of a following vehicle. They concluded that, because the Illinois statute is a reasonable exercise of the police power, a federal court is precluded from weighing the relative merits of the contour mudguard against any other kind of mudguard and must sustain the validity of the statute notwithstanding the extent of the burden it imposes on interstate commerce. They rely in the main on *South Carolina Highway Dept. v. Barnwell Bros.*, supra. There is language in that opinion which, read in isolation from such later decisions as *Southern Pacific Co. v. Arizona*, supra, and *Morgan v. Virginia*, supra, would suggest that no showing of burden on interstate commerce is sufficient to invalidate local safety regulations in absence of some element of discrimination against interstate commerce.

The various exercises by the States of their police power stand, however, on an equal footing. All are entitled to the same presumption of validity when challenged under the Due Process Clause of the Fourteenth Amendment. . . . Similarly the various state regulatory statutes are of equal dignity when measured against the Commerce Clause. Local regulations which would pass muster under the Due Process Clause might nonetheless fail to survive other challenges to constitutionality that bring the Supremacy Clause into play. Like any local law that conflicts with federal regulatory measures . . . , state regulations than run afoul of the policy of free trade reflected in the Commerce Clause must also bow. *Bibb v. Navajo Freight Lines, Inc.*, 359 U. S. 520, pp. 528, 529 (1959).

Similarly, in the present case, the defendants have been unable to rebut the evidence that shows both a heavy burden on interstate commerce and no legitimate state interest in safety. Instead defendants and the District Court relied upon factual presumptions, which are no longer true and were rebutted, to foreclose a proper weighing of the burden placed on commerce and the state interest served.

The facts of the present case alone demonstrate the need for the Supreme Court to review this case. Wisconsin's ban by and of itself is a major impediment to the national economy because of Wisconsin's strategic location. Of perhaps greater importance is the need for this Court to clarify the applicable law in the area of transportation. The error of the District Court in this case is not attributable to it alone. No legal scholar can clearly find the same underlying rule of decision among the various holdings of this Court in *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U. S. 177 (1938); *Southern Pacific Co. v. Arizona*, 325 U. S. 761 (1945); *Bibb v. Navajo Freight Lines, Inc.*, 359 U. S. 520 (1959) and *Brotherhood of Locomotive Firemen & Enginemen v. Chicago Rock Island and Pacific Railroad Co.*, 393 U. S. 129 (1968). Conflicting lines of authority have developed and the lower courts are unable to apply a consistent theory of decision.

The danger to the national economy from the confusion is major. As our economy becomes more and more interdependent, the transportation systems that tie together that economy become more important, more complex, and more delicate. Legal confusion in the area of regulation of those transportation systems may well create managerial confusion and impediments to their operation that can have profound effects on the national economy.

For the above reasons, appellants respectfully submit that this Court has jurisdiction of this case and should note probable jurisdiction for the purpose of plenary consideration of the merits of the case.

Respectfully submitted,

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APPENDIX A

Case No. 75-C-172

(Caption Omitted)

Before: SPRECHER, Circuit Judge; DOYLE, District Judge; and WARREN, District Judge

PER CURIAM

This is an action whereby two corporate plaintiffs challenge certain provisions of the Wisconsin Administrative Code which concern size limitations for trailer-train trucks traveling upon interstate highways in the state of Wisconsin. The plaintiff Raymond Motor Transportation, Inc. is a Minnesota corporation with its principal place of business in Minneapolis, Minnesota; the plaintiff Consolidated Freightways Corporation of Delaware is a Delaware corporation with its principal place of business in Menlo Park, California. The named defendants are various officials of the state of Wisconsin including the State Attorney General, the Secretary of the Department of Transportation, the Chief Traffic Engineer, the commanding officer of the Wisconsin State Patrol, and the chairman and various members of the Wisconsin Highway Commission. Each defendant is sued in his individual and official capacity.

The case presents a cause of action arising under the provisions of 42 U.S.C. § 1983 because it is alleged that the defendants have acted and are acting under color of state statute, regulation and custom to deprive the plaintiffs of rights and privileges secured by the Constitution and laws of the United States. Jurisdiction thus lies pursuant to 28 U.S.C. § 1343.¹ The action is properly before a

¹It would seem apparent that, while both named plaintiffs are corporations, a corporation is a "citizen of the United States or other person" entitled to invoke § 1983. See, e.g., *Philadelphia Newspapers, Inc.*

three-judge court, convened by the terms of 28 U.S.C. § 2281, because the complaint specifically attacks and seeks interlocutory and permanent injunctive relief against enforcement of a regulation made by a state administrative board or commission acting under state statute, said administrative regulations being § Hy 30.14(3)(a) of the Wisconsin Administrative Code.

On March 18, 1976 the cause came on for hearing before this three-judge panel. The following memorandum and order serves to resolve the merits of this controversy, and constitutes final findings of fact and conclusions of law as required by Rule 52(a) of the Federal Rules of Civil Procedure.²

v. Borough Council, etc., of the Borough of Swarthmore, 381 F. Supp. 228 (E. D. Pa. 1974), citing at note 2, *Adams v. City of Park Ridge*, 293 F. 2d 585 (7th Cir. 1961).

The complaint invokes jurisdiction, "pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1332, 28 U.S.C. § 1343, 42 U.S.C. § 1983, and 28 U.S.C. § 220102." In view of the finding that jurisdiction exists through 28 U.S.C. § 1343, the Court need not and does not decide whether jurisdiction is either possible or appropriate under the remaining statutory provisions.

²The issues in this suit have been fully briefed pursuant to a briefing schedule set prior to hearing. All testimony has been presented by depositions and affidavits. On April 7, 1976 Judge Doyle sent a letter to all counsel to indicate that the members of the three-judge panel had discovered an apparent error in the notice of the March 18 hearing. While the Court had presumed that the hearing presented the case for final adjudication, the notice, dated March 12, 1976, indicated that the hearing was to concern only plaintiffs' motion for a preliminary injunction. Counsel for each party have responded, and indicate that final determination on the merits is indeed appropriate at this time. The Court therefore orders that trial of this action on the merits is hereby consolidated with the hearing on the motion for preliminary injunctive relief, as permitted by Rule 65(a)(2) of the Federal Rules of Civil Procedure. In view of the acquiescence of counsel, there is no impropriety in this procedure. See generally: 11 Wright & Miller, *Federal Practice and Procedure: Civil* § 2950 (1973 ed.).

I.

Each of the named plaintiffs is a commercial interstate motor carrier hold a certificate from the Interstate Commerce Commission. Each is engaged in substantial interstate commerce operations through Wisconsin, and each currently utilizes a variety of types of trailer-truck vehicles, including some currently prohibited by the statutory and administrative policies of the state of Wisconsin because of their length.

Both plaintiffs make rather extensive use of "twin trailer" combinations, articulated vehicles consisting of a truck tractor, a semitrailer, a set of dollies and a second semitrailer; the two freight-carrying vans are each 27 feet in length, for an overall length of 65 feet for the assembled twin-trailer vehicle. Both plaintiffs also make use of more traditional semitrailer vehicles which are not articulated and which are 55 feet in length when assembled. The differences in size as between these two particular types of vehicles are graphically illustrated at Appendix A.

By statute and administrative regulation, the state of Wisconsin limits the length of most trailer-train vehicle combinations to 55 feet. This limitation is attacked in this suit; counsel for the plaintiffs allege that to so limit vehicle length precludes general commercial operation of twin trailer combinations in Wisconsin and, therefore, constitutes a direct or indirect discrimination against interstate commerce and an unlawful burden on interstate commerce in violation of Art. I Sec. 8 of the United States Constitution, as well as a breach of equal protection of the law as guaranteed by the fourteenth amendment to the United States Constitution. For any one or all of these three

reasons, it is urged that we issue a declaratory judgment that the vehicle length limitations in effect in Wisconsin are void, and enter a permanent injunction to restrain further prohibition of twin trailer operation on the interstate highways which traverse the state. For the reasons to follow, we decline to take such action.

II.

Initially, the Court would briefly review the rather complex statutory and administrative scheme by which twin trailer vehicles are now generally prohibited.

Chapter 348 of the Wisconsin Statutes governs the size, weight and load of private and commercial vehicles traveling on all highways in Wisconsin. Section 348.07 provides, *inter alia*, that the over-all length of any single vehicle may not exceed 35 feet and that the over-all length of any combination of two⁴ vehicles shall not exceed 55 feet. These limitations are subject to certain exceptions set out in the statute itself, as well as other exceptions to be granted by permit.³ Section 348.08 concerns vehicle trains, and provides that except by permit no vehicle shall

³Section 348.07 of the Wisconsin Statutes reads in pertinent part as follows:

"348.07 Length of vehicles

"(1) No person, without a permit therefor, shall operate on a highway any single vehicle with an over-all length in excess of 35 feet or any combination of 2 vehicles with an over-all length in excess of 55 feet, except as otherwise provided in subs. (2) and (2a).

"(2) The following vehicles may be operated without a permit for excessive length if the overall length does not exceed the indicated limitations." [Certain exceptions follow for passenger busses, trolley busses, mobile homes, implements of husbandry temporarily operated on a highway and tour trains. No limitations to vehicles of Wisconsin origin or of Wisconsin residents is set out.]

draw more than one other vehicle where the over-all length of the combination exceeds 55 feet.⁴

Permits for vehicles and loads of excessive size or weight may be granted pursuant to section 348.25 of the Wisconsin Statutes; subparagraph (3) of that section grants power to the Wisconsin Highway Commission to prescribe forms for such permits as are allowed by law, and to impose reasonable conditions upon and to adopt reasonable rules for the issuance of permits and the operations of permittees thereunder.⁵ Sections 348.26 and 348.27 denominate the types of permits that may become available and include, *inter alia*, annual permits for trailer-train combinations not greater than 100 feet in length. See: § 348.27(6) Wis. Stats.⁶

⁴Section 348.08 of the Wisconsin Statutes reads in pertinent part as follows:

"348.08 Vehicle trains

"(1) No person, without a permit therefor shall operate on a highway any motor vehicle drawing or having attached thereto more than one vehicle, except that:

"(a) Two vehicles may, without such permit, be drawn or attached when such vehicles are being transported by the drive-away method in saddle-mount combination and the over-all length of such combination of vehicles does not exceed 55 feet;" [Other exceptions for implements of husbandry and tour trains follow. Again, no limitation to vehicles from the state of Wisconsin is set out.]

⁵Section 348.25(3) of the Wisconsin Statutes reads in full as follows:

"(3) The highway commission shall prescribe forms for applications for all single trip permits the granting of which is authorized by s. 348.26 and for those annual or multiple trip permits the granting of which is authorized by s. 348.27(2) and (4) to (7m). The commission may impose such reasonable conditions prerequisite to the granting of any permit authorized by s. 348.26 or 348.27 and adopt such reasonable rules for the operation of a permittee thereunder as it deems necessary for the safety of travel and protection of highways. Local officials granting permits may impose such additional reasonable conditions as they deem necessary in view of local conditions."

⁶Section 348.27(6) of the Wisconsin Statutes reads in full as follows:

Pursuant to and in accordance with the authority embodied in section 348.25, the Wisconsin Highway Commission has enacted chapter Hy 30 of the Wisconsin Administrative Code. This chapter establishes limits, procedures and conditions under which the various permits authorized by sections 348.26 and 348.27 may be issued. Trailer-train permits are governed by section Hy 30.14; general limitations on the issuance of trailer-train permits are described at paragraph (3), and include the restrictions that are the challenged in this action:

"Hy 30.14 Trailer-train permits.

* * *

"(3) General limitations on the issuance of trailer-train permits.

* * *

"(a) Trailer-train permits shall be issued only for the operation of vehicles used for the transporting of municipal refuse or waste, or for the interstate or intra-state operation without load of vehicles in tran-

"(6) Trailer train permits. Annual permits for the operation of trains consisting of truck tractors, tractors, trailers, semi-trailers or wagons which do not exceed a total length of 100 feet may be issued by the highway commission for use of the state trunk highways and by the officer in charge of maintenance of the highway to be used in the case of other highways. No trailer train permit issued by the local officials for use of highways outside the corporate limits of a city or village is valid until approved by the highway commission. Every permit issued pursuant to this subsection shall designate the route to be used by the permittee."

Other statutory provisions would allow other types of permits to issue including, *inter alia*, single trip permits for oversize of overweight vehicles or loads, trailer trains or mobile homes (§ 348.26 Wis. Stats.), as well as annual or multiple trip permits on a general basis, for industrial interplant operation, for pole, pipe and vehicle transportation, for mobile homes, for metal scrap, for emergency conservation of energy in transport of fuel or milk commodities, and for poles and wood pulp (§ 348.27 Wis. Stats.). The record appears to disclose that the plaintiffs have argued that the permits they seek are permissible under § 348.27(6).

sit from manufacturers or dealer to purchaser or dealer, or for the purpose of repair."

Thus, while § 348.27(6) Wis. Stats. contemplates annual permits for trailer-train vehicles not to exceed 100 feet, the Wisconsin Highway Commission has precluded issuance thereof in all but a limited class of cases by virtue of promulgation of § Hy 30.14(3)(a), Wis. Admin. Code.⁷ It seems apparent that this administrative prohibition falls within the discretionary rulemaking power granted by § 348.25(3); the Court must nonetheless determine whether, by adopting this position, the highway commission or any defendant has acted in derogation [sic] of either the commerce clause in Art I Sec. 8, or the equal protection clause of the fourteenth amendment to the United States Constitution.

II.

It is clear that a state statute or ordinance which discriminates against interstate commerce is an impermissible affront to the commerce clause in Art. I Sec. 8 of the United States Constitution. The discrimination thereby prohibited may be either express or implicit. While the face of a state regulation may speak in a neutral fashion, apparently applicable to interstate and intrastate commerce alike, the regulation is nonetheless unconstitutional where its prac-

⁷Attached to the complaint as exhibit B are letters of application for twin trailer permits on interstate highways in Wisconsin, as filed with the Chief Traffic Engineer of the State of Wisconsin on behalf of Raymond Motor Transportation, Inc. and Consolidated Freightways Corporation of Delaware. Each seeks a permit through § 348.27(6) Wis. Stats. and § Hy 30.14 Wis. Admin. Code. Exhibit C to the complaint is a letter from the Chief Traffic Engineer dated April 17, 1975 whereby said applications were denied for failure to comply with § Hy 30.14 (3)(a) Wis. Admin. Code.

tical effect is to discriminate against interstate commercial activities:

"The commerce clause forbids discrimination, whether forthright or ingenious. In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce."

Best & Co. v. Maxwell, 311 U. S. 454, 455-456 (1940).

"... a statute may, upon its face, apply equally to the people of all the States, and yet be a regulation of interstate commerce which a State may not establish. A burden imposed by a State upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all states, including the people of the State enacting such statute."

Minnesota v. Barber, 136 U. S. 313, 326 (1890).

In point of fact, it is relatively rare that a state "artlessly discloses an avowed purpose to discriminate against interstate goods." *Dean Milk Co. v. City of Madison*, 340 U. S. 349, 354 (1951). The actual impact of the state policy upon interstate commerce is the critical consideration. See: *Baldwin v. G. A. F. Seeüig, Inc.*, 294 U. S. 511 (1935); and *Washington State Apple Advertising Commission v. Holshouser*, 408 F. Supp. 857 (3-Judge Ct., E. D. N. C. 1976).

After thorough review of the position of each party the Court concludes that there is neither explicit nor implicit discrimination against interstate commerce through the statutory and administrative scheme in question here. No statute or regulation now at issue expressly focuses its

impact upon interstate trucking operations.⁸ In practical effect, it seems apparent that the highways of the state of Wisconsin are controlled without regard to the interstate or intrastate nature of the commerce.⁹

⁸The Court would note, for example, that the very administrative regulation under attack in this suit, § Hy 30.13(3)(a) Wis. Admin. Code, expressly states that permits for trailer-trains are to be issued for transport of municipal waste "or for the interstate or intra-state operation" of certain vehicles. The regulation is explicitly nondiscriminatory.

⁹To support their claims that the state of Wisconsin does discriminate against interstate commerce, counsel for the plaintiffs point to language in a statutory authorization for permits for oversize vehicles used for interplant industrial operations. This statute, §348.27(4) reads in full as follows (with emphasis added at the questioned provisions):

"(4) Industrial interplant permits. The highway commission may issue, to industries and to their agent motor carriers owning and operating oversize vehicles in connection with interplant, and from plant to state line, operations in this state, annual permits for the operation of such vehicles over designated routes, provided that such permits shall not be issued under this section to agent motor carriers or from plant to state line for vehicles or loads of width exceeding 96 inches upon routes of the national system of interstate and defense highways. If the routes desired to be used by the applicant involve city or village streets or county or town highways, the application shall be accompanied by a written statement of route approval by the officer in charge of maintenance of the highway in question. A separate permit is required for each oversize vehicle to be operated."

The Court finds this statute to lack the significance that plaintiffs' counsel would urge. Exhibit 5 to the deposition of one Robert R. Weaver is an interdepartmental report from Mr. Weaver, Permit Supervisor for the Wisconsin Department of Transportation, to G. T. Lardsness, Chief Maintenance Engineer. The report is a general review of policies regarding issuance of permits for movement of oversize and overweight loads on public highways. The first page of the report expressly indicates that pursuant to Chapter 30 of the Wisconsin Administrative Code, "[p]ermits are issued on the basis of policies established by the statutes and by the [Wisconsin Highway] Commission without regard to whether the applicant is a resident of Wisconsin or not." (emphasis added).

Counsel for the plaintiffs make much of an incident where the Godfrey Conveyor Company, Inc., an Indiana resident was denied a permit for overlength interplant transport of loads of boats. See: Deposition of Robert R. Weaver at pp. 8 et seq. The Court declines to construe this permit refusal as any indication of a state policy against interstate commerce, however, because the Godfrey letter of application failed to disclose that the applicant was an industrial manufacturer as required by § 348.25(4). See Deposition of Wayne Volk, Chief Traffic Engineer, at pp. 45 et seq. The applicant thus failed to meet qualifications applicable to every would-be permittee.

The record in this action does not reveal that by means of these facially neutral proscriptions the state of Wisconsin intentionally seeks to isolate local industry or agriculture from foreign competition. Compare: *Minnesota v. Barber, supra*; *Dean Milk Co. v. Madison, supra*; *Washington State Apple Ad. Comm'n. v. Holshouser, supra*. For all of the foregoing reasons the Court concludes that no impermissible discrimination against interstate commerce is established by the facts of the instant case.

IV.

Having found no explicit or implicit discrimination, the Court must next consider whether the burden imposed upon interstate commerce outweighs the benefits to the local populus [sic]. As stated in a relatively recent decision of the United States Supreme Court:

"Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. *Huron Cement Co. v. Detroit*, 362 U. S. 440, 443. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities."

Pike v. Bruce Church, Inc., 397 U. S. 137, 142 (1970).

In sum, the Court is convinced that all statutory and administrative overweight and overlength permit provisions are worded and applied in an evenhanded fashion.

This Court begins by recognizing that, absent national legislation precluding differing state policies concerning a particular aspect of interstate commerce, a state "may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens." *Sproles v. Binford*, 286 U. S. 374, 390 (1932), quoting *Morris v. Duby*, 274 U. S. 135, 143 (1927).

"Where traffic control and use of highways are involved and where there is no conflicting federal regulation, great leeway is allowed local authorities, even though the local regulation materially interferes with interstate commerce."

Railway Express Agency, Inc. v. New York, 336 U. S. 106, 111 (1949), citing *S. C. Hwy. Dept. v. Barnwell Bros.*, 303 U. S. 177, 187 *et seq.* (1938), and *Maurer v. Hamilton*, 309 U. S. 598 (1940).

The United States Supreme Court has also noted that "there are few subjects of state regulation affecting interstate commerce which are so peculiarly of local concern as is the use of the state's highways." *Southern Pacific Co. v. Arizona*, 325 U. S. 761, 783 (1945). That case also held that, as to matters of highway control, "the state has exceptional scope for the exercise of its regulatory power. . . ." *Id.* at p. 783. See too, *Bibb v. Navajo Freight Lines*, 359 U. S. 520, 523 (1959). ["The power of the State to regulate the use of its highways is broad and pervasive."]

If related to the subject of highway safety, state statutes and regulations carry "a strong presumption of validity" when subjected to judicial review. *Bibb v. Navajo Freight Lines*, *supra*, 359 U. S. at p. 524. In the field of safety, evidence must be adduced by those challenging any highway regulation to overcome the presumption of validity to which the law is entitled. *Southern Pacific Co. v. Arizona*, *supra*, 325 U. S. at p. 796 (Douglas, J., dissenting).

The Court concludes that the analysis here must begin with a two-tiered approach: we must first consider whether the questioned regulation was within the province of the state legislature and agency then, secondly, whether the means of regulation chosen are reasonably adapted to the ends sought. See: *S. C. Hwy. Dept. v. Barnwell Bros.*, 303 U. S. 177, 190 (1938). In so doing, the Court does not reconsider policy decisions and possible less intrusive state alternatives, as these are matters for the state legislature.¹⁰ See: *S. C. Hwy. Dept. v. Barnwell Bros.*, *supra*, 303 U. S. at p. 190; *Bibb v. Navajo Freight Lines*, *supra*, 359 U. S. at 524.

¹⁰There appears to be some difference of opinion concerning the question of whether, in the context of this case, this Court can consider if less intrusive alternatives are available to the state legislature. The quotation from *Pike v. Bruce Church, Inc.* which begins this portion of the opinions seems to indicate that less intrusive alternatives must generally be taken into account with regard to commerce clause questions. See: 397 U. S. at p. 142. See Too: *Dean Milk Co. v. Madison*, *supra*, 340 U. S. at p. 354. However, the cases cited in the text [sic] of the opinion at this footnote clearly states that the presence or absence of less intrusive alternatives is immaterial in a suit of this nature. Because neither *Pike v. Bruce Church, Inc.* nor *Dean Milk Co. v. Madison* directly concern highway safety regulations, this Court will rely on those cases that do, and ignore possible less intrusive state alternatives to goals which the question regulations are designed to implement. As a practical matter, no less intrusive alternative to length limitations on commercial vehicles seems possible.

The following conclusions can be derived from application of the foregoing legal standards to the facts of this case:

First, it seems clear that the legislature and highway commission of the state of Wisconsin are within their province as concerns the prohibitions about which the plaintiffs complain. The United States Supreme Court has specifically held that "a state may impose non-discriminatory restrictions with respect to the character of motor vehicles moving in interstate commerce as a safety measure and as a means of securing the economical use of its highways." *S. C. Hwy. Dept. v. Barnwell Bros.*, *supra*, 303 U. S. at p. 190. The plaintiffs have cited and the Court has found no federal legislation especially covering this aspect of interstate commerce, and the state is therefore entitled to prescribe uniform highway regulations such as those now in question. *Sproles v. Binford*, *supra*, 286 U. S. at p. 390.

Secondly, the Court cannot find that the evidence in the voluminous briefs, depositions and affidavits adduced by or on behalf of the plaintiffs has met the plaintiffs' burden of dissipating the presumption of validity which attaches to these regulations. Simply stated, § 30.14(3)(a) and its companion statutes and regulations have not been shown to be adapted to no permissible safety goal.

As a prime example of the safety considerations at issue here, the Court might focus on the problem of visual impairment posed by the longer twin-trailer combination trucks. It is undisputed that, if the difference in speed between the two vehicles is 10 miles per hour, it would require approximately two-thirds of a second longer for a faster vehicle to pass the added 10 feet of a twin-trailer

combination. See: Deposition of Fred J. Myers at pp. 18-19. This period of time would be increased, perhaps dramatically so, if the passing vehicle was traveling at less than the maximum speed permissible and/or if the vehicle being passed was traveling in excess of the applicable maximum speed. It cannot be disputed that drivers of passing vehicles are subjected to additional visual impairment as a result of the greater length of twin-trailer combinations and the time required to pass them; such additional visual impairment might be extreme under adverse weather or traffic conditions.

This Court cannot conclude that prevention of added visual impairment or other similar safety considerations were not within the collective mind of the legislature and administrative bodies responsible for these regulations. Because such factors are indeed legitimate safety concerns, the Court must determine that the proscriptions in question so serve to implement various safety goals.

Under the analysis prescribed by earlier decisions of the United States Supreme Court, this Court would sustain the legislation in question upon the foregoing findings that those promulgating the statutes and regulations were acting within their province and have attempted to implement legitimate safety goals. See: *S. C. Hwy. Dept. v. Barnwell Bros.*, *supra*. More recent Supreme Court authority, however, indicates that further considerations are necessary. Rather than defer to the state upon a finding of a rational basis for its conduct, we must inquire whether the burden the state has imposed upon interstate commerce "is clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, Inc.*, *supra*, 397 U. S. at p. 142. More specifically, this Court must consider whether

upon the whole record "the total effect of the law as a safety measure in reducing accidents and casualties is so slight of problematical as not to outweigh the national interest in keeping interstate commerce free from interferences which seriously impede it. . . ." *Bibb v. Navajo Freight Lines*, *supra*, 359 U. S. at p. 524 quoting *Southern Pacific Co. v. Arizona*, *supra*, 325 U. S. at pp. 775-776. The questioned regulations must be upheld unless this is so.

After thorough review of the position of each party and the voluminous record in this proceeding, the Court must and does find that the total effects of the restrictions imposed by § Hwy 30.14(3)(a) are neither slight nor problematical as concerns highway safety. The burdens thereby imposed upon interstate commerce are not unconstitutional in scope or degree.

The United States Supreme Court has on several occasions equated limitation on vehicle size to public safety. The opinions in these cases contain language which is quite broad; they demonstrate that for purposes of judicial review of state highway legislation, size restrictions might be deemed inherently tied to public safety:

"With the increase in number and size of the vehicles used upon a highway, both the danger and the wear and tear grow. To exclude unnecessary vehicles—particularly the large ones commonly used by carriers for hire—promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by Congress which deal specifically with the subject."

Morris v. Doby, 274 U. S. 135, 144 (1927), quoting *Buck v. Kuykendall*, 267 U. S. 307 (1925).

"In the instant case, there is no discrimination against interstate commerce and the regulations adopted by the State, assuming them to be otherwise valid, fall within the established principle that in matters admitting of diversity of treatment, according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act. *Minnesota Rate Cases*, 230 U. S. 352, 399, 400.

"We do not find the provision of § 3(c), fixing approximately the same limit of length for individual motor vehicles and for a combination of such vehicles, to be open to objection. If the State saw fit in this way to discourage the use of such trains or combinations on its highways, we know of no constitutional reason why it should not do so."

Sproles v. Binford, 286 U. S. 374, 390 and 392 (1932).

Counsel for the plaintiffs place much reliance upon the decision in *Bibb v. Navajo Freight Lines*, 359 U. S. 520 (1959). Certainly they should do so as the Supreme Court there found an Illinois statute requiring use of a novel type of mudflap on semitrailers to pose an unconstitutional burden on interstate commerce.

This Court finds the *Bibb* case to be factually distinguishable from the circumstances in the case at bar. *Bibb* presented a situation where Illinois was but one state pioneering a new safety device, out of line with the laws of other states in the union, and directly contrary to the laws of the state of Arkansas. The evidence presented at trial actually demonstrated that the new mudflaps possessed no advantages over those in general use; the evi-

dence further showed that adverse effects resulted from these mudflaps such that certain dangers of the public were increased.

In the instant case, the restrictions Wisconsin has imposed upon twin trailer combinations are also in effect in at least 12 other of these United States and the District of Columbia. The trucking equipment required by Wisconsin law is not incompatible with nor in violation of the laws of any other state. That compliance with Wisconsin regulations imposes added costs upon the plaintiffs is a fact of no material consequence. *Bibb, supra*, 359 U. S. at p. 526.

The Court is of the opinion that, perhaps except under circumstances more compelling than those of the case at bar, the state of Wisconsin is entitled to choose the maximum length of the commercial vehicles using its highways without judicial re-evaluation of that choice. The record reveals that 75-foot twin trailers are in use in several other states. See, e.g., the affidavit of F. J. Wickham (Wyoming), and the affidavit of Ray Lower (Idaho). If the plaintiffs are correct in their assertion that there is little or no significant difference between 55-foot and 65-foot trucks, they might argue that there is no significant difference between 65-foot and 75-foot trucks. Would this Court then be required to command use of 75-foot trucks on the highways of Wisconsin? Such are the problems inherent in judicial efforts to second-guess state highway regulations of this nature.

Certainly the question of whether twin trailer trucks are to be permitted upon state highways is a matter "admitting of diversity of treatment, according to the special

requirements of local conditions." The restrictions at issue here must thus be upheld. See: *Sproles v. Binford*, *supra*.

V.

The Court next moves to the plaintiffs claims that § Hy 30.14(3)(a) and its companion statutes and regulations serve to deny them equal protection of the law as guaranteed by the fourteenth amendment to the United States Constitution.

With respect to the equal protection argument, it appears that a state's safety regulations are entitled to the same presumption of validity discussed in the foregoing section of this opinion relative to the commerce clause:

"[W]e are dealing here with state legislation in the field of safety where the propriety of local regulation has long been recognized. See *Atlantic Coast Line R. Co. v. Georgia*, 234 U. S. 280, 291, and cases collected in *California v. Thompson*, 313 U. S. 109, 113-114. Whether the question arises under the Commerce Clause or the Fourteenth Amendment, I think the legislation is entitled to a presumption of validity."

Southern Pacific Co. v. Arizona, 325 U. S. 761, 796 (1945), Douglas, J., dissenting.

Furthermore, when state highway regulations are in question, resolution of a problem of equal protection is to be accomplished by means of practical considerations. That all or some similar evils are not governed by the state is a matter of little consequence. In upholding a New York City traffic regulation concerning advertising

on commercial vehicles, Justice Douglas noted the general deference to which such safety restrictions are entitled:

"We cannot say that that [legislative] judgment is not an allowable one. Yet if it is, the classification has relation to the purpose for which it is made and does not contain the kind of discrimination against which the Equal Protection Clause affords protection. It is by such practical considerations based on experience rather than by theoretical inconsistencies that the question of equal protection is to be answered. *Patsone v. Pennsylvania*, 232 U. S. 138, 144; *Marcus Brown Co. v. Feldman*, 256 U. S. 170, 198-199; *Metropolitan Co. v. Brownell*, 294 U. S. 580, 585-586. And the fact that New York City sees fit to eliminate from traffic this kind of distraction but does not touch what may be even greater ones in a different category, such as the vivid displays on Times Square, is immaterial. It is no requirement of equal protection that all evils of the same genus be eradicated or none at all. *Central Lumber Co. v. South Dakota*, 226 U. S. 157, 160."

Railway Express Agency, Inc. v. New York, 336 U. S. 106, 110 (1949).

In the case at bar, counsel for the plaintiffs have prepared voluminous sets of data to document the scope of the discrimination which they feel is engendered by the Wisconsin limitation on twin trailer combination trucks. Essentially, they argue that the distinctions created between local and foreign industry and between 55-foot and 65-foot trucks are each without sufficient rationale.

Plaintiffs' counsel first argue that the state of Wisconsin has infringed upon a fundamental right of interstate

travel such that only a compelling state interest will justify the distinctions at issue. The Court disagrees.

It appears that all of the authorities cited in support of the assertion that commercial vehicles are entitled to a fundamental right of interstate travel are cases concerning civil liberties of private citizens. See, e.g., *Shapiro v. Thompson*, 394 U. S. 618 (1969). The Court declines to adopt those opinions in the context of the economic regulations here in question. Unless no rational basis can be found to support the legislative discrimination, the statutes and regulations are to be upheld. See: *Railway Express v. New York*, *supra*; *Sproles v. Binford*, *supra*, 286 U. S. at p. 391 *et seq.*

The question of whether there is no rational basis for the distinctions created by the face and implementation of § Hy 30.14(3)(a) merits little discussion beyond that of the foregoing portions of this opinion. Essentially, the Court finds that differences in treatment between local and foreign trucking operations are slight, if existent at all. See: part III, *supra*. The distinctions between 55-foot and 65-foot tractor-trailer combinations are supported by adequate safety considerations, as discussed in with respect to the problem of the burden on interstate commerce, part IV *supra*.¹¹

When judged by practical rather than technical considerations, the Court must conclude that the differences in treatment about which the plaintiffs complain are not

¹¹Compare: *Sproles v. Binford*, as quoted in text *supra*: where a state chooses to regulate length limits for individual and combinations of motor vehicles there appears to be "no constitutional reason why it should not do so."

in violation of the equal protection clause of the fourteenth amendment to the United States Constitution.

VI.

After due consideration of the position of each party, as disclosed by the pleadings, briefs and other documents that comprise the written record in this case to date and as supplemented by the oral argument heard, and for the reasons set out in the foregoing memorandum opinion;

THE COURT ORDERS that, pursuant to Rule 65(a) (2) of the Federal Rules of Civil Procedure, the trial on the merits of this case is hereby consolidated with the hearing of March 18, 1976, noticed as a hearing on the plaintiffs' motion for preliminary injunctive relief;

THE COURT FINDS that the administrative regulation at issue here, § Hy 30.14(3)(a) Wis. Admin. Code, constitutes neither an impermissible discrimination against interstate commerce nor an undue burden upon interstate commerce, all such that no violation of the commerce clause of Art. I Sec. 8 of the United States Constitution is perceived;

THE COURT FURTHER FINDS that, both on its face and as applied, § Hy 30.14(3)(a) Wis. Admin. Code creates no distinction without a rational basis such that no violation of equal protection clause of the fourteenth amendment to the United States Constitution is demonstrated;

THE COURT THEREFORE ORDERS that the requests for preliminary and permanent injunctive relief and for

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declaratory judgment, as filed on behalf of the plaintiffs, must be and are hereby DENIED.

This case is DISMISSED without taxation of costs and attorneys' fees to any party.

So ordered this 13th day of August, 1976.

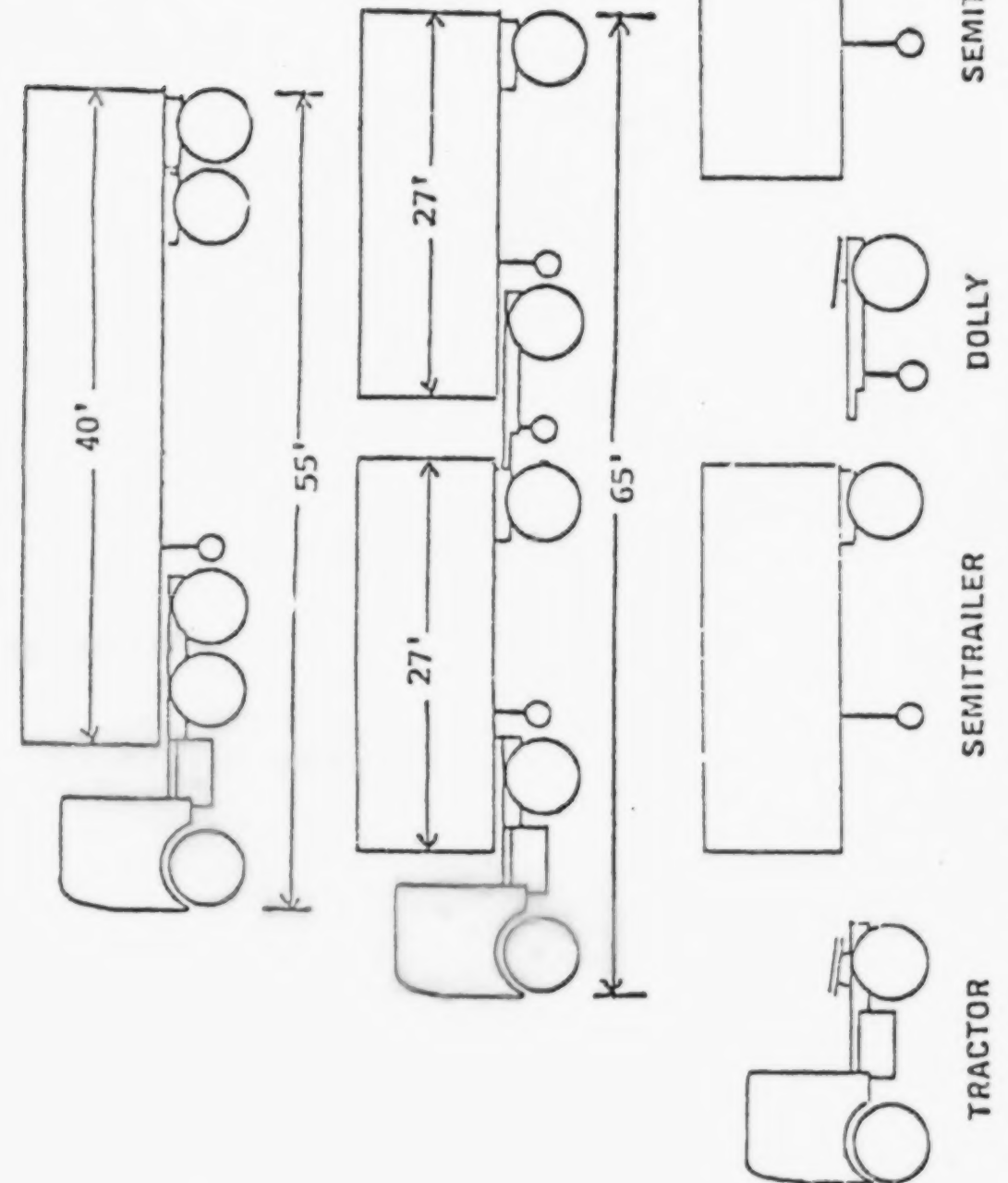
/s/ ROBERT A. SPRECHER
Robert A. Sprecher
Seventh Circuit Court of
Appeals Judge

/s/ JAMES E. DOYLE
James E. Doyle
United States District Judge

/s/ ROBERT W. WARREN
Robert W. Warren
United States District Judge

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APPENDIX A (of Court's Opinion)



APPENDIX B

1b

NOTICE OF APPEAL

[Filed September 29, 1976]

Case No. 75-C-172

(Caption Omitted)

Please take notice that plaintiffs, Raymond Motor Transportation, Inc. and Consolidated Freightways Corporation of Delaware hereby appeal to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on August 13, 1976.

This appeal is taken pursuant to 28 U.S.C. § 1253.

/s/ JACK R. DEWITT
DEWITT, McANDREWS
& PORTER, S.C.
121 South Pinckney Street
P. O. Box 2509
Madison, Wisconsin 53701

ALBERT HARRIMAN, Assistant Attorney General for the State of Wisconsin, Attorney for defendants in this case hereby acknowledges personal service of a copy of the above Notice of Appeal this 27th day of September 1976.

/s/ ALBERT HARRIMAN, Assistant Attorney General
Attorney for the defendants

APPENDIX C

STATUTES

348.07 LENGTH OF VEHICLES. (1) No person, without a permit therefor, shall operate on a highway any single vehicle with an over-all length in excess of 35 feet or any combination of 2 vehicles with an over-all length in excess of 55 feet, except as otherwise provided in subs. (2) and (2a).

(2) The following vehicles may be operated without a permit for excessive length if the over-all length does not exceed the indicated limitations:

. . . (d) 60 feet for a combination of mobile home and towing vehicle, except that no mobile home and towing vehicle having a combined length in excess of 50 feet shall be operated during the hours of 12 m. to 12 p.m. on Sundays, New Year's, Memorial, Independence, Labor, Thanksgiving and Christmas days;

(e) No limitation for implements of husbandry temporarily operated upon a highway.

348.08 VEHICLE TRAINS. (1) No person, without a permit therefor shall operate on a highway any motor vehicle drawing or having attached thereto more than one vehicle. . . .

348.175 SEASONAL OPERATION OF VEHICLES HAULING PEELED OR UNPEELED FOREST PRODUCTS CUT CROSSWISE. The transportation of peeled or unpeeled forest products cut crosswise in excess of gross weight limitations under s. 343.15 shall be permitted during the winter months when the highways are so frozen that no damage may result thereto by reason of such transportation. If at any time any person is so transporting such products upon a class

"A" highway in such frozen condition then he may likewise use a class "B" highway without other limitation, except that chains and other traction devices are prohibited on class "A" highways but such chains and devices may be used in cases of necessity. . . .

348.19(1) . . . (b) Any other provision of the statutes notwithstanding, a vehicle transporting peeled or unpeeled forest products cut crosswise shall not be required to proceed to a scale more than one mile from the point of apprehension if the estimated gross weight of the vehicle does not exceed the lawful limit.

* * *

348.25 GENERAL PROVISIONS RELATING TO PERMITS FOR VEHICLES AND LOADS OF EXCESSIVE SIZE AND WEIGHT. (1) No person shall operate a vehicle on or transport an article over a highway without first obtaining a permit therefor as provided in s. 348.26 or 348.27 if such vehicle or article exceeds the maximum limitations on size, weight or projection of load imposed by this chapter.

(2) Vehicles or articles transported under permit are exempt from the restrictions and limitations imposed by this chapter on size, weight and load to the extent stated in the permit. Any person who violates a condition of a permit under which he is operating is subject to the same penalties as would be applicable if he were operating without a permit.

(3) The highway commission shall prescribe forms for applications for all single trip permits the granting of which is authorized by s. 348.26 and for those annual or multiple trip permits the granting of which is authorized by s. 348.27(2) and (4) to (7m). The commission may impose such reasonable conditions prerequisite to the granting of

any permit authorized by s. 348.26 or 348.27 and adopt such reasonable rules for the operation of a permittee thereunder as it deems necessary for the safety of travel and protection of the highways. Local officials granting permits may impose such additional reasonable conditions as they deem necessary in view of local conditions.

(4) Except as provided under s. 348.27(7m), permits shall be issued only for the transporting of a single article or vehicle which exceeds statutory size, weight or load limitations and which cannot reasonably be divided or reduced to comply with statutory size, weight or load limitations, except that:

(a) A permit may be issued for the transportation of property consisting of more than one article, some or all of which exceeds statutory size limitations, provided statutory gross weight limitations are not thereby exceeded and provided the additional articles transported do not cause the vehicle and load to exceed statutory size limitations in any way in which such limitations would not be exceeded by the single article.

(b) A single trip permit may be issued for the transportation of a load of implements of husbandry, consisting of not more than 2 articles, when the load does not exceed the length requirement in s. 348.07 by more than 5 feet.

348.26 SINGLE TRIP PERMITS. (1) APPLICATIONS. All applications for single trip permits for the movement of over-size or overweight vehicles or loads shall be made upon the form prescribed by the highway commission and shall be made to the officer or agency designated by this section as having authority to issue the particular permit desired for the use of the particular highway in question.

(2) PERMITS FOR OVERSIZE OR OVERWEIGHT VEHICLES OR LOADS. Except as provided in sub. (4), single trip permits for oversize or overweight vehicles or loads may be issued by the highway commission for use of the state trunk highways and by the officer in charge of maintenance of the highway to be used in the case of other highways. Such local officials also may issue such single trip permits for use of state trunk highways within the county or municipality which they represent. Every single trip permit shall designate the route to be used by the permittee. Whenever the officer or agency issuing such permits deems it necessary to have a traffic officer accompany the vehicle through his municipality or county, a reasonable charge for such traffic officer's services shall be paid by the permittee.

(3) TRAILER TRAIN PERMITS. The highway commission and those local officials who are authorized to issue permits pursuant to sub. (2) also are authorized to issue single trip permits for the operation of trains consisting of truck-tractors, tractors, trailers, semitrailers or wagons on highways under their jurisdiction, except that no trailer train permit issued by a local official for use of a highway outside the corporate limits of a city or village is valid until approved by the highway commission. No permit shall be issued for any train exceeding 100 feet in total length. Every permit issued pursuant to this subsection shall designate the route to be used by the permittee.

(4) MOBILE HOME PERMITS. Single trip permits for the movement of oversize mobile homes may be issued only by the highway commission, regardless of the highways to be used. Every such permit shall designate the route to be used by the permittee and shall authorize use of the

highways only between sunrise and sunset on days other than Saturdays, Sundays and holidays.

348.27 ANNUAL OF MULTIPLE TRIP PERMITS. (1) APPLICATIONS. All applications for annual or multiple trip permits for the movement of oversize or overweight vehicles or loads shall be made to the officer or agency designated by this section as having authority to issue the particular permit desired for use of the particular highway in question. All applications under subs. (2) and (4) to (7m) shall be made upon forms prescribed by the highway commission.

(2) ANNUAL PERMITS. Annual permits for oversize or overweight vehicles or loads may be issued by the highway commission, regardless of the highways involved. A separate permit is required for each oversize or overweight vehicle to be operated upon a highway.

... (4) INDUSTRIAL INTERPLANT PERMITS. The highway commission may issue, to industries and to their agent motor carriers owning and operating oversize vehicles in connection with interplant, and from plant to state line, operations in this state, annual permits for the operation of such vehicles over designated routes, provided that such permit shall not be issued under this section to agent motor carriers or from plant to state line for vehicles or loads of width exceeding 96 inches upon routes of the national system of interstate and defense highways. If the routes desired to be used by the applicant involve city or village streets or county or town highways, the application shall be accompanied by a written statement of route approval by the officer in charge of maintenance of the highway in question. A separate permit is required for each oversize vehicle to be operated.

(5) **POLE, PIPE AND VEHICLE TRANSPORTATION PERMITS.** The highway commission may issue an annual permit to pipeline companies or operators or public service corporations for transportation of poles, pipe, girders and similar materials used in its business and to auto carriers operating "haulaways" specially constructed to transport motor vehicles and which exceed the maximum limitations on length of vehicle and load imposed by this chapter. Such permits issued to auto carriers shall limit the length of vehicle and load to a maximum of 10 feet in excess of the limitations in s. 348.07(1) and shall be valid only on a class "A" highway as defined in s. 348.15(1)(b).

(6) **TRAILER TRAIN PERMITS.** Annual permits for the operation of trains consisting of truck tractors, tractors, trailers, semitrailers or wagons which do not exceed a total length of 100 feet may be issued by the highway commission for use of the state trunk highways and by the officer in charge of maintenance of the highway to be used in the case of other highways. No trailer train permit issued by the local officials for use of highways outside the corporate limits of a city or village is valid until approved by the highway commission. Every permit issued pursuant to this subsection shall designate the route to be used by the permittee.

(7) **MOBILE HOME PERMITS.** The highway commission may issue annual statewide permits to licensed mobile home transport companies and to licensed mobile home manufacturers and dealers authorizing them to transport oversize mobile homes over any of the highways of the state in the ordinary course of their business. Every such permit shall authorize use of the highways only between sun-

rise and sunset on days other than Saturdays, Sundays and holidays.

. . . (8) **EMERGENCY ENERGY CONSERVATION PERMITS.** During an energy emergency, the highway commission may waive the divisible load limitation of s. 348.25(4) and issue permits valid for a period not to exceed 30 days for overweight vehicles carrying energy resources or fuel or milk commodities designated by the governor or his designee, regardless of the highways involved, to conserve energy. Such permits may only allow weights not more than 10% greater than the gross axle and axle combination weight limitations, and not more than 15% greater than the gross vehicle weight limitations under ss. 348.15 and 348.16. No permit issued under this subsection is valid unless the overweight vehicle is registered under ch. 341 for the maximum gross weight allowed by the permit and the department of transportation has been paid a permit fee of \$10 per 1,000 pounds or fraction thereof for the amount by which such maximum gross weight exceeds 73,000 pounds. Nothing in this subsection shall be construed to permit the highway commission to waive the requirements of s. 348.07.

(9) **POLE LENGTH AND PULPWOOD PERMIT.** The highway commission may issue annual permits for the transportation on a vehicle combination consisting of a truck and full trailer of loads of pole length and pulpwood exceeding statutory length or weight limitations over any class of highway for a distance not to exceed 3 miles from the Michigan-Wisconsin state line, provided that if the roads desired to be used by the applicants involve streets or highways other than those within the state trunk highway system, the application shall be accompanied by a written

statement of route approval by the officer in charge of maintenance of such other highway.

ADMINISTRATIVE REGULATIONS

Hy 30.01 General. (1) Pursuant to authority contained in section 348.25(3), Wis. Stats., the commission does hereby establish limits, procedures and conditions under which the various permits authorized by sections 348.26 and 348.27, Wis. Stats., may be issued.

(2) Permits for the movement over state trunk highways of vehicles and loads exceeding limits or conditions established hereby shall be issued only on specific authorization by the commission.

(3) In the interest of uniformity and brevity, the commission hereby establishes the following conditions relating to more than one type of permit, which conditions become effective by reference thereto in the section of the rules relating to the specific type of permit:

(a) *Application requirements.* 1. Applications shall be made to the issuing authority on forms prescribe by the state of Wisconsin, department of transportation, division of highways, hereinafter known as the division of highways, which will be furnished to the applicant upon request.

2. Requests for amendments to permits shall be submitted in writing to the authority issuing the permit.

(b) *Authorization to issue permits.* The authorization for the issuance of permits shall be as stated in the sections relating to each specific type of permit.

(c) *General limitations on issuance of permits.* 1. Except for general permits (Hy 30.06), industrial interplant permits (Hy 30.08), pole and pipe transportation permits (Hy 30.10), vehicle transportation permits (Hy 30.12) and double bottom milk truck permits (Hy 30.18), permits shall not be issued nor valid for the transporting of loads or articles which could reasonably be divided in such a manner as to allow transporting of the loads or articles in 2 or more loads which would not exceed statutory size and weight limits, nor shall permits be issued or valid for the transporting of more than one article if the vehicle and load exceed statutory weight limits. (This does not prohibit the transporting of necessary blocking for a load, nor the transporting of such necessary blocking on the otherwise empty vehicle to and from the origin or destination of the load, but it does prohibit, among other things, the addition of an extra bucket, boom section, and so forth to a load being transported under a permit issued for an overweight vehicle and load.)

2. Except as specifically authorized in sections Hy 30.02, Hy 30.04, Hy 30.06, Hy 30.14 and Hy 30.18, permits shall not authorize the operation of more than 2 vehicles in combination.

3. Permits shall be issued and valid only for vehicles equipped with pneumatic tires.

(d) *Insurance and liability conditions.* 1. In applying for and accepting a permit, the permittee agrees to pay any claim for any bodily injury or property damage for which he is legally responsible resulting from operations under the permit and to save the state and its subdivisions

harmless from any claim which may arise from operations over public highways under the permit.

* * *

(e) *General conditions.* 1. The maximum size limitations and the maximum axle, axle combination and vehicle weights authorized by a permit shall not be exceeded. A divisible load, consisting of articles none of which exceeds statutory size limits, may not be transported under a permit.

2. Permits issued by the commission authorize the use of any of the highways of the state, subject to the limitations stated in the permit.

* * *

Hy 30.02 Single trip permits. (1) APPLICATION REQUIREMENTS. The application requirements for single trip permits shall be as set forth in Wis. Adm. Code section Hy 30.01(3)(a), and the following:

* * *

(2) *Authorization to Issue Single Trip Permits.* The officer or agency authorized by section 348.26, Wis. Stats., may issue single trip permits for operation over specific classes of highways as provided in said section. Single trip permits for transportation over state trunk highways may be issued as follows:

* * *

3(b) Single trip permits may be issued for the transportation of a vehicle combination, consisting of 3 empty vehicles in transit from manufacturer or dealer to purchaser or dealer, or for the purpose of repair. The towing vehicle shall be a truck-tractor or a road tractor.

* * *

Hy 30.04 Annual permits. (1) APPLICATION REQUIREMENT. The application requirements for annual permits shall be as set forth in Wis. Adm. Code section Hy 30.01(3)(a) 1 and the following:

(a) Annual permit applications shall be directed to the Chief Traffic Engineer, Division of Highways, Madison, Wisconsin, 53702.

(2) AUTHORIZATION TO ISSUE ANNUAL PERMITS. The chief traffic engineer or his authorized representatives may issue annual permits subject to such size, weight and other limitations as the commission may, from time to time, prescribe.

(3) GENERAL LIMITATIONS ON ISSUANCE OF ANNUAL PERMITS. The issuance of annual permits shall be subject to the general limitations stated in Wis. Adm. Code sections Hy 30.01(3)(c) 1, 2 and 3, and the following:

(a) Annual permits shall not be issued for house trailers, mobile homes, travel trailers or camper trailers.

(b) Annual permits may be issued for self-propelled carry-all scraper, provided that no single axle may exceed 35,000 pounds.

* * *

Hy 30.06 General permits. (1) APPLICATION REQUIREMENTS. The application requirements for general permits shall be as set forth in subsection Hy 30.01(3)(a), Wis. Adm. Code, and the following:

* * *

(2) **AUTHORIZATION TO ISSUE GENERAL PERMITS.** (a) The officer of agency authorized by section 348.27, Wis. Stats., may issue general permits for operation on highways for the maintenance of which the officer or agency is responsible.

* * *

3(b) General permits may be issued for loads which exceed statutory size or weight limitations or both.

* * *

(d) General permits may be issued for the operation of a vehicle combination consisting of three empty vehicles in transit from manufacturer or dealer to purchaser or dealer or for the purpose of repair. The towing vehicle shall be a truck-tractor or a road tractor.

* * *

Hy 30.08 Industrial interplant permits. (1) *Application requirements.* The application requirements for industrial interplant permits shall be as set forth in Wis. Adm. Code section Hy 30.01(3)(a), and the following:

* * *

(3) **GENERAL LIMITATIONS ON ISSUANCE OF INDUSTRIAL INTERPLANT PERMITS.** The issuance of industrial interplant permits shall be subject to the general limitations stated in Wis. Adm. Code sections Hy 30.01(3)(c) 2, 3 and 4, and the following:

* * *

5(a) The size limitations on vehicles which may be operated on a public highway under an industrial inter-

plant permit will be determined in each particular instance by the commission.

* * *

Hy 30.10 Pole and pipe transportation permits. (1) **APPLICATION REQUIREMENTS.** The application requirements for pole and pipe transportation permits shall be as set forth in Wis. Adm. Code section Hy 30.01(3)(a) 1, and the following:

* * *

(2) **AUTHORIZATION TO ISSUE POLE AND PIPE TRANSPORTATION PERMITS.** The chief traffic engineer or his authorized representatives may issue pole and pipe transportation permits subject to such size and other limitations as the commission may, from time to time, prescribe.

* * *

Hy 30.12 Vehicle transportation permits. (1) **APPLICATION REQUIREMENTS.** The application requirements for vehicle transporting permits shall be as set forth in Wis. Adm. Code section Hy 30.01(3)(a) 1, and the following:

* * *

(2) **AUTHORIZATION TO ISSUE VEHICLE TRANSPORTATION PERMITS.** The chief traffic engineer or his authorized representatives may issue vehicle transportation permits subject to such size and other limitations as the commission may, from time to time, prescribe.

* * *

(3) **GENERAL LIMITATIONS ON ISSUANCE OF VEHICLE TRANSPORTATION PERMITS.** The issuance of vehicle transportation permits shall be subject to the general limitations

stated in Wis. Adm. Code sections Hy 30.01(3)(c) 2, 3 and 4, and the following:

(a) Vehicle transportation permits will be issued only to auto carriers operating "haulaways" specially constructed to transport motor vehicles and for vehicles which exceed the maximum limitations on length of vehicle and load imposed by chapter 348, Wis. Stats.

* * *

Hy 30.14 Trailer-train permits. (1) APPLICATION REQUIREMENTS. The application requirements for trailer-train permits shall be as set forth in Wis. Adm. Code section Hy 30.01(3)(a), and the following:

(a) Applications for trailer-train permits for movement over state trunk highways shall be directed to the Chief Traffic Engineer, Division of Highways, Madison, Wisconsin, 53702.

(b) Application for trailer-train permits for movement over highways other than state trunk highways shall be made to the officer in charge of the maintenance of the highway to be used.

(2) AUTHORIZATION TO ISSUE TRAILER TRAIN PERMITS.

(a) The officer or agency authorized by section 348.27(6), Wis. Stats., may issue trailer-train permits for operation on highways for the maintenance of which the officer or agency is responsible.

(b) The chief traffic engineer or his authorized representatives may issue trailer-train permits for movement on the state trunk highway system, subject to such size and other limitations as the commission may, from time to time, prescribe.

(c) Trailer-train permits issued by local authorities for transportation over highways outside of the corporate limits of cities and villages shall not be valid until approved by the commission or its authorized representatives. The chief traffic engineer and his authorized representatives may approve trailer-train permits issued by local authorities.

(3) GENERAL LIMITATIONS ON THE ISSUANCE OF TRAILER-TRAIN PERMITS. The issuance of trailer-train permits shall be subject to the general limitations stated in Wis. Adm. Code sections Hy 30.01(3)(c) 2 and 4, and the following:

(a) Trailer-train permits shall be issued only for the operation of vehicles used for the transporting of municipal refuse or waste, or for the interstate or intra-state operation without load of vehicles in transit from manufacturer or dealer to purchaser or dealer, or for the purpose of repair.

(b) Trailer-train permits shall not be issued for wagons used in connection with seasonal agricultural industries.

(4) INSURANCE AND LIABILITY CONDITIONS. Trailer-train permits are issued subject to the insurance and liability conditions set forth in Wis. Adm. Code sections Hy 30.01(3)(d) 1, 2, 3, 4, 5 and 6, and the following:

(a) The permittee will be required to certify and may be required to present satisfactory written evidence that at least the following insurance coverage or in lieu thereof a bond in a form satisfactory to the authority issuing the permit, is or will be in full force and effect on the vehicles

and load designated in the permit while operating on the public highway:

Bodily injury liability—each person	\$100,000
Bodily injury liability—each accident	300,000
Property damage liability—each accident	100,000

(5) GENERAL CONDITIONS. Trailer-train permits are issued subject to the general conditions set forth in Wis. Adm. Code sections Hy 30.01(3)(e) 1, 3, 4, 5, 8, 9, 10, 11, 12, 17, 20, 22, 23, 24, 25, 26, 27, and 30, and the following:

(a) A trailer-train permit issued by the division of highways for a movement which is partly on the state highway system and partly on other classes of highways, is valid only on state highways.

(b) The total length of trains consisting of truck-tractors, tractors, trailers, semitrailers, or wagons operating under the terms of a trailer-train permit and the number of vehicles in such a trailer-train determined by the authority issuing the permit shall not be exceeded, and in no event shall the overall length of the train of vehicles exceed 100 feet. The height and width of such vehicles shall not exceed statutory limits.

(c) Trailer-trains operating under a permit shall carry in addition to any lights prescribed by Wisconsin Statutes and by the valid ordinances of the municipalities in which they are operated, a red light or approved reflective signal on each side of each trailer so placed as to make the trailer visible from all sides.

(d) A trailer-train permit is valid only for the vehicle(s) described upon the application and permit.

Supreme Court, U. S.

FILED

MAY 19 1977

APPENDIX

MICHAEL RODAK, JR., CLERK

In the
SUPREME COURT of the UNITED STATES

October Term, 1976

No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC.,
a Minnesota Corporation

and

CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE
a Delaware Corporation,

Appellants,

vs.

ZEL S. RICE, ROBERT T. HUBER, JOSEPH
SWEDA, REBECCA YOUNG, WAYNE VOLK,
LEWIS V. VERSNIK, and BRONSON C.
LA FOLLETTE,

Appellees.

*On Appeal From The United States District Court
For The Western District of Wisconsin*

APPEAL DOCKETED [REDACTED], 1976
JURISDICTION NOTED MARCH 7, 1977

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OPINION BELOW

[The Opinion of the District Court was printed in the Appendix to the Jurisdictional Statement, and is omitted from this Appendix.]

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

April 21, 1975 - Plaintiffs Raymond Motor Transportation and Consolidated Freightways filed their Complaint, Motion for Preliminary Injunction and Motion to Convene Three-Judge Court in the U.S. District Court for the Western District of Wisconsin.

May 19, 1975 - Defendants' Original Answer filed.

May 22, 1975 - Pretrial Conference.

June 17, 1975 - Defendants' Amended Answer filed.

November 19, 1975 - Stipulation as to Evidentiary Record entered into by parties.

March 18, 1976 - Oral Arguments on the Merits heard by three-Judge Court.

August 13, 1976 - Judgment entered denying Plaintiffs' requests for preliminary and permanent injunctive relief and for declaration judgment; case was dismissed.

September 29, 1976 - Plaintiffs notice of appeal filed.

COMPLAINT
[Caption Omitted in Printing]

NOW COME the Plaintiffs, Raymond Motor Transportation, Inc., a Minnesota corporation, and Consolidated Freightways Corporation of Delaware, a Delaware corporation, by their attorneys, DeWitt, McAndrews & Porter, S.C., and for a Complaint against the above-named Defendants allege as follows:

I.

NATURE OF ACTION

1. This is an action for an injunction and a declaratory judgment holding that Wisconsin's state-wide prohibition against 65 foot twin-trailer combinations on the Federal Interstate Highway System violates the Commerce Clause and the Equal Protection Clause of the United States Constitution. More specifically, this Complaint seeks a declaration that §HY 30.14(3)(a), Wisconsin Administrative Code, constitutes an undue burden on interstate commerce to the extent that it makes illegal on Interstates 94 and 90 in Wisconsin, the 65 foot twin-trailers used on the entire length of Interstate 94 and connecting routes in all other

states from Detroit to the Pacific Northwest. This action is limited to the use of twin-trailers by Plaintiffs on interstate super-highways for general commodity shipments in interstate commerce only. The Complaint does not seek operation of twin-trailers on two lane highways or in local commerce.

As

[2]

more fully appears hereafter, Wisconsin unreasonably discriminates against Plaintiffs by routinely allowing other 65 foot combinations, such as automobile trailers transporting new and used cars, on Wisconsin highways including two lane and four lane highways, limited as well as unlimited access highways, and state trunk and interstate highways. 65 foot twin-trailer combinations are safer than single semi-trailer combinations presently allowed on Wisconsin highways.

II.

JURISDICTION

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331, 28 U.S.C. §1332, 28 U.S.C. §1343, 42 U.S.C. §1983, and 28 U.S.C. §2201-02 relating to declaratory judgments. This action arises under the Consitution and laws of the

United States. The amount in controversy as to each Plaintiff exceeds the sum of \$10,000 exclusive of interest and costs. This controversy is wholly between citizens of different states of the United States.

III.

PARTIES

3. Plaintiff Raymond Motor Transportation, Inc., is a Minnesota corporation with its principal place of business at 1912 Broadway, N.E., Minneapolis, Minnesota 55413, and is a citizen of the United States and the State of Minnesota.

4. Plaintiff Consolidated Freightways Corporation of Delaware is a Delaware corporation with its principal place of business at 175 Linfield Drive, Menlo Park, California 94025, and is a citizen of the United States and of the State of Delaware.

5. Defendant Zel S. Rice is a citizen of the State of Wisconsin and resides at 4833 Sheboygan Avenue, Madison, Wisconsin 53705. Defendant Rice is Secretary of the Department of Transportation of the State of Wisconsin and is sued individually and in his official capacity. Upon information and belief, his duties include supervision, in whole or

in part, of employees of the Wisconsin Department of Transportation who are responsible for issuing permits for the operation of vehicle combinations exceeding 55 feet in length.

[3]

6. Defendant Robert T. Huber is a citizen of the State of Wisconsin and resides at 2228 South 78th Street, West Allis, Wisconsin 53219. Defendant Huber is the Chairman of the Wisconsin Highway Commission and is sued individually and in his official capacity. His duties include issuing annual permits for the operation of vehicle combinations exceeding 55 feet in length, and promulgating and enforcing regulations related thereto.

7. Defendant Joseph Sweda is a citizen of the State of Wisconsin and resides at 4910 Ascot Lane, Madison, Wisconsin 53711. Defendant Sweda is a member of the Wisconsin Highway Commission and is sued individually and in his official capacity. His duties include issuing annual permits for the operation of vehicle combinations exceeding 55 feet in length, and promulgating and enforcing regulations related thereto.

8. Defendant Rebecca Young is a citizen of the State of Wisconsin and resides at 639 Crandall Street, Madison, Wisconsin 53711. Defendant Young is a member of the Wisconsin Highway Commission

and is sued individually and in her official capacity. Her duties include issuing annual permits for the operation of vehicle combinations exceeding 55 feet in length, and promulgating and enforcing regulations related thereto.

9. Defendant Wayne Volk is a citizen of the State of Wisconsin and resides at 1240 Sweet Briar Road, Madison, Wisconsin 53705. Defendant Volk is the Chief Traffic Engineer for the State of Wisconsin and is sued individually and in his official capacity. He has been delegated the responsibility of issuing permits for the operation of vehicle combinations exceeding 55 feet in length, by the Wisconsin Highway Commission.

10. Defendant Lewis V. Versnik is a citizen of the State of Wisconsin and resides at RFD 1, Lodi, Wisconsin 53555. Defendant Versnik is the commanding officer of the Wisconsin State Patrol and is sued individually and in his official capacity. His duties include enforcing restrictions limiting the length of trucks to 55 feet on interstate highways in Wisconsin, unless a proper permit has been issued by the Wisconsin Highway Commission.

[4]

11. Defendant Bronson C. LaFollette is a citizen of the State of Wisconsin and resides at 733 Lakewood Boulevard, Madison, Wisconsin 53704.

Defendant LaFollette is the Attorney General of the State of Wisconsin and is sued individually and in his official capacity. He is joined as party-Defendant in this lawsuit as it challenges the constitutionality of Wisconsin administrative regulations, orders, and/or laws. He is also the chief state constitutional officer charged with enforcing Wisconsin laws and regulations.

IV.

STATEMENT OF THE CLAIM

12. Plaintiff Raymond Transportation, Inc. (hereinafter "Plaintiff Raymond") is a common carrier duly certificated by the Interstate Commerce Commission under Certificate of Public Convenience and Necessity No. MC-66788, and various sub numbers thereunder. It holds authority to operate as a common motor carrier of general commodities (with the usual exceptions, excluding commodities in bulk, commodities requiring special equipment or handling, Class A and B explosives, and household goods) in interstate and foreign commerce.

13. Pursuant to its operating authority, Plaintiff Raymond is regularly engaged as a common motor carrier between the Minneapolis-St. Paul

commercial zone and points West, on the one hand, and the Chicago commercial zone and contiguous territory in the state of Illinois on the other hand, via Interstate Highways 94 and 90. Plaintiff Raymond participates in joint rates and the through movement of shipments and interchange of vehicles, in interstate commerce, originating and terminating beyond its authorized territory. Plaintiff Raymond has no pick-up or delivery services within the State of Wisconsin and solely uses Interstates 94 and 90 to traverse Wisconsin on its routings between the Chicago area and the Minneapolis-St. Paul area.

14. Plaintiff Consolidated Freightways Corporation of Delaware (hereinafter "Plaintiff CF") is a common carrier duly certificated by the Interstate Commerce Commission under Certificate of Public Convenience and

[5]

Necessity No. MC-42487 and various sub numbers thereunder. It holds authority to operate as a common motor carrier of general commodities (with the usual exceptions, excluding commodities in bulk, commodities requiring special equipment or handling, Class A and B explosives, and household goods) in interstate and foreign commerce.

15. Pursuant to its operating authority, Plaintiff CF is regularly engaged as a common motor carrier between such points as the Detroit commercial zone and the Seattle commercial zone, as well as zones and points in between, traversing Wisconsin via Interstates 94 (and alternate Interstate 894) and 90. Plaintiff CF regularly traverses Wisconsin via said interstate highways between the Illinois-Wisconsin boundary and the Minnesota-Wisconsin boundary, moving traffic and vehicles which neither originate nor terminate in Wisconsin. In addition, Plaintiff CF has pick-up and delivery terminals at various points in the State of Wisconsin. Accordingly, a portion of this action relates to interstate traffic which Plaintiff CF originates or terminates in the State of Wisconsin but is specifically limited to Plaintiff CF's Milwaukee and Madison terminal locations which are directly contiguous to Interstate 94 and Interstates 94 and 90, respectively, and may be reached by four lane divided highways exclusively. Such shipments, originating or terminating in the State of Wisconsin, move solely in interstate commerce.

16. At all times herein, Interstate 94 was and is a four lane, limited-access, divided highway, spanning two-thirds of the nation, generally in an East-West direction, between Detroit and, in

conjunction with Interstate 90, the Pacific Northwest. Interstate 94 includes a segment of the State of Wisconsin between a point near Zion, Illinois, and a point near Lakeland, Minnesota [and includes a segment designated Interstate 894 forming an alternate or by-pass routing in Milwaukee County, Wisconsin]. At all times herein, Interstate 90 was and is a four lane, limited-access, divided highway, with a segment located in the State of Wisconsin between a point near South Beloit, Illinois, and Madison, Wisconsin, at which point Interstate 90 intersects Interstate 94. A map outlining the routes which are the subject of this action is attached hereto and incorporated

[6]

herein as Exhibit A. The routes of Interstates 94 (and alternate Interstate 894) and 90 from the principal, most direct, non-circuitous interstate routing between Chicago and points East, on the one hand, and Minneapolis-St. Paul and points West, on the other. The routing from the Illinois-Wisconsin boundary via Interstate 90 to Madison, Interstates 94/90 to a point near Tomah, Wisconsin, and Interstate 94 to the Minnesota-Wisconsin boundary, forms the most direct routing between Chicago and Minneapolis-St. Paul. All portions of Interstate 94 (and alternate Interstate 894) and

Interstate 90 in the State of Wisconsin were financed by the Federal government which provided a minimum of 90% of the necessary funds pursuant to 23 U.S.C. §120(c).

17. Plaintiffs both own and, where permitted by law, operate twin-trailer combinations which consist of a tractor pulling two trailers up to 28 feet each in length, hitched in tandem, for a total length not in excess of 65 feet (hereinafter collectively referred to as "Twin-Trailers"). Twin-Trailers carrying general commodities are permitted on the entire length of Interstate 94 and connecting routes between Detroit and Seattle, with the exception of that segment of Interstate 94 in the State of Wisconsin. Twin-Trailers carrying general commodities are similarly barred on Interstate 90 in Wisconsin. But for the Wisconsin "island," Twin-Trailer general commodity thru-service would otherwise be available between Detroit and Seattle, Chicago and Minneapolis, and other points in between.

18. §348.27(6) Wis. Stats., allows Twin-Trailers to be operated on Wisconsin highways by annual permits:

"TRAILER TRAIN PERMITS.
Annual permits for the operation of
trains consisting of truck tractors,

tractors, trailers, semitrailers or wagons which do not exceed a total length of 100 feet may be issued by the highway commission for use of the state trunk highways and by the officer in charge of maintenance of the highway to be used in the case of other highways. No trailer train permit issued by the local officials for use of highways outside the corporate limits of a city or village is valid until approved by the highway commission. Every permit issued pursuant to this subsection shall designate the route to be used by the permittee."

[7]

19. However, Defendants Rice, Huber, Sweda and Young and/or their predecessors, as members of the Wisconsin Highway Commission acting under color of law and exercising statutory authority to promulgate administrative orders, have enacted a regulation of state-wide application which denies Twin-Trailer annual permits to carriers of general commodities. The regulation §HY 30.14(3)(a), Wisconsin Administrative Code, provides:

"Trailer-train permits shall be issued only for the operation of vehicles used for the transporting of municipal refuse or waste, or for the interstate or intra-state operation without load of vehicles in

transit from manufacturer or dealer to purchaser or dealer, for the purpose of repair."

20. Further, all Defendants herein are responsible for the administration and enforcement of §HY 30.14(3)(a), Wisconsin Administrative Code, and, as a result thereof, have refused and do refuse to issue, and are precluded by said regulation from issuing, Twin-Trailer permits to general commodity carriers.

21. On April 10, 1975, Plaintiffs Raymond and CF filed applications with Defendants Rice, Huber, Sweda, Young, and Volk for annual permits to be used:

- A. In the case of Plaintiff Raymonds's application, on a restricted number of Twin-Trailers limited to the transportation of general commodities, in interstate commerce only, across Wisconsin, via Interstates 90 and 94 [from South Beloit, Illinois to Lakeland, Minnesota] for shipment and operations solely between states other than Wisconsin; and
- B. In the case of Plaintiff CF, on a restricted number of Twin-Trailers limited to the transportation of general commodities in interstate commerce, for certain shipments moving solely across Wisconsin, on Interstate 94 (and alternate Interstate 894) and Interstate 90 solely between states other than Wisconsin,

sin, and for certain shipments moving in interstate commerce only to and from terminals of Plaintiff CF located at Milwaukee and Madison, directly contiguous to Interstate 94 and Interstates 90 and 94, respectively, and reached by access routes exclusively over four-lane divided highways and roads.

These applications are hereinafter collectively referred to as "the Interstate Applications." A copy of the Interstate Applications is attached hereto and incorporated as Exhibit B. On April 17, 1975, said Defendants, under color of law, denied the Interstate Applications because of the limitations in §HY 30.14(3)(a), Wisconsin Administrative Code, restricting such permits to the [8]

transportation of municipal waste, etc., as provided therein. A copy of the order denying the Interstate Applications is attached hereto and incorporated herein as Exhibit C.

22. §HY 30.14(3)(a), Wisconsin Administrative Code, as applied to the Interstate Applications, constitutes an undue burden on interstate commerce in violation of the Commerce Clause, Article I, Section 8, Clause 1, of the United States Constitution.

23. To the extent Defendants may have also denied the Interstate Applications as a result of

other regulations or statutes not presently known by Plaintiffs, or cited by Plaintiffs as being applicable herein, those regulations and statutes are similarly unconstitutional.

24. As a direct result of Defendants' refusal to issue the Interstate Applications:

- A. Plaintiffs are forced to divide and/or unload Twin-Trailers at the Illinois-Wisconsin and Minnesota-Wisconsin borders to enable general commodities to pass across Wisconsin, or are forced to forego use of Twin-Trailers in and between territories other than Wisconsin, or are forced to operate Twin-Trailers over indirect, inefficient, circuitous routings, depending upon particular and varying circumstances.
- B. Plaintiff Raymond has been effectively precluded from fully utilizing the more efficient Twin-Trailers in its Minnesota and Illinois operations where Twin-Trailers are permissible.
- C. Plaintiffs are unable to integrate and utilize uniform equipment in operations East and West of Wisconsin.
- D. Plaintiffs are forced to subject the public to delays in service as a result of the unnecessary unloading and reloading of shipments at the Wisconsin border, or extra-territorially in other states.

- E. Plaintiffs are unable to interline Twin-Trailer shipments in this region.
- F. Plaintiffs are forced to incur additional and unnecessary expenses for labor, fuel, maintenance and equipment as a result of Wisconsin's Twin-Trailer restrictions. In the case of Plaintiff CF, these additional and unnecessary expenses amount to \$2.4 million per year.
- G. Plaintiffs are unable to utilize their most energy efficient equipment per se, i.e., Twin-Trailers, in an energy crisis.

[9]

25. Wisconsin's prohibition against Twin-Trailers on the interstate system has increased general commodity freight interstate rates formulated for surrounding rate making territories, including Illinois, Indiana, Iowa, Michigan, Ohio, and Wisconsin. Inasmuch as freight rates for the territories including and surrounding Wisconsin are generally determined by averaging the total carrier costs within the respective rate making territories, Wisconsin's Twin-Trailer prohibition has the extra-territorial effect of increasing freight rates on shipments moving solely between points in other states, as well as those moving to, from, and through Wisconsin.

26. Twin-Trailers are safer than the 55 foot single semi-trailer combinations presently in use on

Interstates 94 and 90 in Wisconsin. Twin-Trailers are and have been routinely used on super-highways in most other states of the United States for many years and have a lower accident rate per vehicle mile than do conventional 55 foot single semi-trailer combinations.

27. Interstate 94 (and alternate Interstate 894) and 90, in Wisconsin were built in accordance with Federal specifications and are structurally adequate for Twin-Trailers.

28. Wisconsin's prohibitions against Twin-Trailers on the interstate system as alleged herein, are not applied by Defendants in an even-handed and non-discriminatory manner, as "over-length" permits are routinely granted to classes of vehicles indistinguishable from those of the Plaintiffs in terms of size, safety, and divisibility of loads, pursuant to other administrative regulations and orders. For example:

A. Pursuant to §348.27(5), Wis. Stats., and §Hy 30.12, Wisconsin Administrative Code, Defendants routinely grant permits to automobile carriers to operate 65 foot combinations containing new and used cars on highways throughout Wisconsin, including two lane roads.

B. Pursuant to §348.27(4), Wis. Stats., and §Hy 30.08, Wisconsin Administrative

Code, Defendants routinely grant Wisconsin-based industries and agent motor carriers permits to operate Twin-Trailers and other vehicles exceeding 55 feet, between plants within and without Wisconsin.

[10]

C. Pursuant to §348.27(5), (9), (7), and (7m), Wis. Stats., and similar provisions in the Wisconsin Administrative Code, Defendants also routinely issue permits to operate "over-length" vehicles for the transportation of mobile homes, scrap metal, pulpwood, poles and pipes, in local as well as interstate commerce on two lane highways.

29. Wisconsin's discriminatory regulations which grant "over-length" permits to the auto industry, Wisconsin-based industries, the pole and pipe industry, the mobile home industry, the metal scrap industry, and the pulpwood industry, while excluding general commodity carriers from similar rights, also violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

30. Upon information and belief, Defendants Rice, Huber, Sweda, Young, and Volk have issued "over-length" permits to the above industries to effect local economic interest and advantage.

31. Wisconsin's Twin-Trailer prohibition against general commodity carriers imposes a substantial and excessive burden on interstate

commerce and does not effectuate any legitimate local public interest.

32. Plaintiffs have suffered and continue to suffer irreparable injury for which they have no remedy at law as a result of Defendants' denial of the Interstate Applications.

33. An actual and present controversy exists between Plaintiffs and Defendants as alleged herein.

V.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek judgment as follows:

- A. That the Court convene a three-judge panel to adjudicate this action pursuant to 28 U.S.C. §2281 and 28 U.S.C. §2284, as this action seeks interlocutory and permanent injunctive relief restraining Defendants from enforcing Wisconsin administrative regulations, orders and/or laws.
- [11] B. That the Court issue a preliminary injunction and a permanent injunction restraining and enjoining Defendants from continuing to deny the Interstate Applications, and restraining and enjoining Defendants from enforcing §Hy 30.14(3)(a), Wisconsin Administra-

tive Code, and any other applicable regulations or statutes so as to prohibit Plaintiffs' Twin-Trailers on interstate highways carrying general commodity shipments:

- (i) Across Wisconsin in shipments and operations solely between states other than Wisconsin; and
 - (ii) To or from Wisconsin, in shipments and operation in interstate commerce only, over Interstates 94 (and alternate Interstate 894) and Interstate 90 and originating or terminating at terminals directly contiguous and with access to said Interstates over four lane divided highways exclusively.
- C. That the Court issue a declaratory judgment holding that the denial of the Interstate Applications, and the enforcement of §Hy 30.14(3)(a), Wisconsin Administrative Code, and any other applicable regulations or statutes so as to prohibit Plaintiffs' Twin-Trailers on interstate highways carrying general commodity shipments between states other than Wisconsin, and to or from specific Wisconsin locations, in interstate commerce, violates the Commerce Clause and/or the Equal Protection Clause of the United States Constitution.
- D. That the Court provide any other relief that it may deem just and proper.

[Exhibits Omitted in Printing]

DEFENDANTS' ORIGINAL ANSWER

Filed May 19, 1975

[Caption Omitted in Printing]

Now come the defendants above named by their attorneys, Bronson C. La Follette, Attorney General, and Albert Harriman, Assistant Attorney General and answer the complaint herein as follows:

1. Admit the allegations of paragraph 1 of the complaint except deny that Wis. Adm. Code Hy 30.14(3)(a) constitutes an undue burden on interstate commerce to any extent, and deny that Wisconsin unreasonably discriminates against plaintiffs in any way. As to the allegation that 65 foot twin-trailer combinations are safer than single semi-trailer combinations, defendants have no knowledge sufficient to form a belief as to the truth or falsity thereof, and therefore deny the same and put the plaintiffs to their proof thereof.

2. Admit the allegations of paragraph 2 of the complaint, except as to the allegation that the amount in controversy as to each plaintiff exceeds the sum of \$10,000 exclusive of interest

[2]

and costs, defendants have no knowledge sufficient to form a belief as to the truth or falsity thereof, and therefore deny the same and put the plaintiffs to their proof thereof.

3. Admit the allegations of paragraphs 3 through 11 of the complaint.

4. Admit the allegations of paragraphs 12 through 17 of the complaint.

5. Answering paragraph 18 of the complaint, defendants allege that sec. 348.27(6), Stats. authorizes the highway commission to issue permits for the operation of twin-trailers upon state trunk highways.

6. Admit the allegations of paragraph 19 of the complaint.

7. Admit the allegations of paragraph 20 of the complaint, except deny that defendants Versnik and La Follette are responsible for the administration and enforcement of Wis. Adm. Code Hy 30.14(3)(a).

8. Admit the allegations of paragraph 21 of the complaint, except deny that defendants Versnik and La Follette denied the interstate applications of the plaintiffs.

9. Deny the allegations of paragraphs 22 and 23 of the complaint.

10. As to the allegations of paragraphs 24 through 26 of the complaint, defendants have no knowledge sufficient to form a belief as to the truth or falsity thereof, and therefore deny the same and put plaintiffs to their proof thereof.

11. Admit allegations of paragraph 27 of the complaint.

[3]

12. Deny the allegations of paragraph 28 of the complaint except as follows: Admit the allegations of paragraph 28A. Admit the allegations of paragraph 28B, except deny that such permits are presently issued for three vehicles in combination. Admit the allegations of paragraph 28C, except deny that overlength permits are issued for transportation of scrap metal and pulpwood.

13. Deny the allegations of paragraphs 29 through 32 of the complaint.

14. Admit the allegations of paragraph 33 of the complaint.

WHEREFORE, the defendants pray that the court enter judgment declaring that the refusal of the State of Wisconsin to allow plaintiffs' twin-trailers upon its highways does not constitute an undue burden upon interstate commerce and does not deny to plaintiffs the equal protection of the laws.

* * *

PRETRIAL CONFERENCE MEMORANDUM

Entered May 22, 1975

[Caption Omitted in Printing]

* * *

[2]

On or before June 16, 1975, counsel for defendants is to serve and file an amended answer raising any and all affirmative defenses which defendants may elect to raise. Included within said affirmative defenses, defendants will be required to set forth every justification for the challenged regulation, such as safety, for example, upon which defendants will rely. Thereafter, additional justifications may be raised by the defendants only upon express permission by the court.

* * *

[3]

Entered this 22nd day of May, 1975.

BY THE COURT:

/s/ James E. Doyle

District Judge

DEFENDANTS' AMENDED ANSWER

Filed June 17, 1975

[Caption Omitted in Printing]

[1]

NOW COME the defendants above named by their attorneys, Bronson C. La Follette, Attorney General, and Albert Harriman, Assistant Attorney General, and amend their answer to the complaint herein as follows:

1. Admit the allegations of paragraph 1 of the complaint except deny that Wis. Adm. Code Hy 30.14(3)(a) constitutes an undue burden on interstate commerce to any extent, deny that Wisconsin unreasonably discriminates against plaintiffs in any way, and deny that 65 foot twin-trailer combinations are safer than single semi-trailer combinations.

2. Repeat and reallege all of the denials, admissions, and allegations of paragraphs 2 through 14 of their original answer, and incorporate them herein by reference as if fully set forth herein.

[2]

Further answering the complaint the defendants allege as follows:

3. For many years it has been the public policy of this state, as expressed by the legislature in sec. 348.07, Stats., that, with certain exceptions, no combination of two vehicles shall be operated upon the public highway with an overall length in excess of 55 feet. Although numerous bills and resolutions have been introduced to change this 55-foot restriction, the legislature has refused to change this law to permit larger combinations of vehicles to be operated in this state. This limitation of length is a regulation in the interest of public safety. The problem is primarily a matter of commingling upon the same highway more big trucks with automobiles. As an exception to this 55 foot length limitation, the legislature, by sec. 348.27(6), Stats., has authorized the State Highway Commission to issue certain trailer train permits up to 100 feet long. As set forth in Wis. Adm. Code Hy 30.14(3)(a), that Commission has determined that such trailer train permits shall be issued only for hauling municipal waste or the operation, without a load, of trailer train vehicles in transit from manufacturer or dealer to purchaser or dealer, or for the purpose of repair.

4. While trucks are getting bigger, cars are getting smaller. There are also small trucks, vans, campers, motor homes, and cars pulling mobile homes, boat trailers, and other trailers. All of these operate in the same lanes and now at the same speed limits as the largest trucks. None of these fares very well in a collision with a big truck. There are more fatalities in highway accidents involving big trucks than

[3]

in such accidents involving cars alone.

5. It is often hard for a car to pass a truck. This becomes even more difficult where one truck is following behind another truck. Now that trucks may run as fast as cars, trucks will be passing cars more often. This car-truck conflict also arises where either a car or a truck has to change lanes to exit from a freeway. Adding an extra 10 feet to trucks adds an extra 10 feet of this hazard, and increases the passing distance by a much greater amount. This is much worse in rain, or snow, or slippery weather. A car windshield may be temporarily covered by rain or slush, sprayed up by a truck, for the length of time it takes to pass the truck. The longer the truck the greater this problem will be.

6. Stopping distances are greater for big trucks than for cars. Failure of big trucks to be able to stop has caused bad accidents. Twin-trailer combinations tend to fish tail and jack knife in slippery weather. A jack knifed 65-foot twin-trailer could block the whole roadway. The larger the vehicle the greater the blockage and the greater the danger to others.

WHEREFORE, the defendants pray that the court enter judgment declaring that the refusal of the State of Wisconsin to allow plaintiffs' twin-trailers upon its highways does not constitute an undue burden upon interstate commerce and does not deny to plaintiffs the equal protection of the laws.

* * *

STIPULATION AS TO EVIDENTIARY RECORD

Filed November 19, 1975

[Caption Omitted in Printing]

IT IS HEREBY AGREED AND STIPULATED by and between counsel that:

1. The evidentiary record in this case will include all timely-filed depositions, sworn testimony, affidavits, admissions, and all exhibits thereto, as well as any additional evidence late-filed by stipulation.

2. The sworn testimony of Messrs. Ebeling, Wrightson, Foslien and Happper [sic] filed herein, was prepared in advance by agreement of the parties, as is frequently done in ICC cases, on the express understanding that Plaintiffs produce said witnesses in Madison for cross-examination, if requested by Defendants.

3. All xerox or duplicate copies of exhibits attached to depositions, sworn testimony, and affidavits may be used with the same force and effect as if they were originals.

* * *

DEPOSITION OF KENNETH L. PIERSON

Filed August 22, 1975

[Caption Omitted in Printing]

* * *

DIRECT EXAMINATION

BY MR. AXELROD:

* * *

[3]

A. My name is Kenneth L. Pierson. I am the Deputy Director of the Bureau of Motor Carrier Safety, Federal Highway Administration, U. S. Department of Transportation, Washington, D. C. 20590.

Q. What is the Bureau of Motor Carrier Safety?

A. The Bureau of Motor Carrier Safety is that agency of Government charged with the regulating of the safety of operation of motor carriers in interstate and foreign commerce.

* * *

[7]

Q. Mr. Pierson, how prevalent are 65-foot twin trailers today among motor carriers in interstate commerce?

A. The vast majority of the States do permit 65-foot twin trailers.

Q. And could you tell us when 65-foot twin trailers were first used in interstate commerce?

A. That's an interesting question, because probably twin trailers were first used by the military during World War I. Their commercial application really didn't catch on until following World War II, and a tremendous growth began with the Interstate Highway Program, which was initiated in 1956.

Q. Are 65-foot twin trailers permissible under the Federal Safety Regulations governing interstate motor carriers?

[8]

A. Yes, they are.

Q. Can 65-foot twin trailers meet all the standards in the Federal Safety Regulations including, but not limited to, the standards with respect to braking and stopping distances?

A. Yes. Not only can they, but they must meet all of the requirements of the Federal Motor Carrier Safety Regulations when operating in interstate or foreign commerce.

Q. Are explosive carriers permitted to carry explosives on 65-foot twin trailers under the Federal Safety Regulations?

A. Yes, they are.

Q. Was this always the case?

A. No. For a long period of time it was believed that this was not desirable, and during the early 1950s when the Bureau was part of the Interstate Commerce Commission the question of movement of explosives by twin trailers came up and, after a series of hearings and investigations, the Bureau of Motor Carrier Safety and the Interstate Commerce Commission concluded that twin trailers were perfectly safe for the transportation of explosives, and the regulations which precluded them from that traffic were changed.

[9]

Q. Now, in your own personal experience, have you had the opportunity to drive or ride in, test and inspect twin trailers as well as conventional or the usual semitrailer of 55 feet?

A. Yes. As I indicated earlier, I was formerly a truck driver and did spend four years in the field during which time I inspected a significant number of twin-trailer combinations.

Q. What has been the safety experience of the Bureau of Motor Carrier Safety with respect to 65-foot twin trailers as opposed to

semitrailer and tractor combination for an approximate length of 55 feet?

A. Our experience has been that twin trailers are as safe as, if not safer than, conventional semitrailers.

Q. Mr. Pierson, do you have any data supporting your statement that twin trailers are safer or as safe as conventional semitrailers?

A. Yes. Early in 1974 the Bureau of Motor Carrier Safety conducted a survey of carriers known to operate both twin-trailer combinations and conventional units to determine their safety experience. It was felt by us that the most realistic evaluation could be obtained by comparing vehicles that operated over the same terrain, were subject to the same

[10]

control and maintenance and dispatch conditions, and this survey covered a five-year period and has been summarized in a document entitled "Safety Comparison of Doubles Versus Tractor-Semitrailer Operations."

* * *

[10]

Q. What does the data show in terms of safety for twin trailers?

A. The data shows that twin trailers are safer than

[11]

conventional semitrailers after computing the number of accidents per 100,000 miles, the number of injuries per 100,000 and the number of fatalities per 100,000 miles, and estimates of the property damage, injuries and fatalities on a per-accident basis.

In all of the years covered by this data, the twin-trailer operations are significantly safer.

* * *

[13]

Q. And what was the general conclusion for all five years with respect to safety for twin trailers as opposed to semitrailers?

A. Our conclusion was that the data bears out the contention that twin-trailer units are as safe as or safer

[14]

than conventional semitrailer units.

Q. Now, Mr. Pierson, how does the data in the department survey conform to your own qualitative experience as the chief enforcer of the Federal Safety Regulations and the agency that investigates motor carrier accidents?

- A. The data conforms to our views perfectly.
- Q. Now, as the Deputy Director of the Bureau of Motor Carrier Safety, do you have any objection in terms of safety to twin trailers?

A. None whatsoever.

- Q. Mr. Pierson, why are twin trailers safer?

A. There are a number of factors involved. First, better maneuverability because of the increased number of articulation points, which are the joints between each element of the unit, and this increased articulation makes twin trailers more maneuverable and better able to absorb instability.

Secondly, twin trailers track better.

Next, the loads are typically distributed more evenly through the twin-trailer units.

Also, twin trailers require shorter turning radii.

Finally, twin trailers make possible more tire footprint area, which results in better braking, because the

[15]

increase in the area of tire footprint does not bear a linear relationship to the increased weight that would be allowed because of increased capacity.

* * *

CROSS-EXAMINATION

BY MR. HARRIMAN:

[22]

* * *

- Q. Is it also your understanding that trucking companies place their most experienced and competent drivers in the position of driving the doubles as distinguished from driving the semis?

A. Yes. I think that's true as a generalization. Principally because of the seniority system in the franchise trucking industry, which, as you know, is highly unionized. In this case, or in most cases there is a premium pay for the operation of doubles, and therefore the most senior members would bid on those runs and would get them.

- Q. Thus, the apparent better record of doubles is, no doubt, contributed to in part by the fact that we have better drivers driving those vehicles, would you say?

A. Yes. I would tend to agree with that. Although the more important point, I think, is that it's possible for the doubles to be operated more safely and therefore driver experience and training are important backup.

Q. And to the extent that doubles are operated more on the interstates than on the two-lane roads, that would contribute to making the record of the doubles, safety record, more favorable, would it not?

A. Yes, I believe that would be an influence.

* * *

[25]

Q. But I understand that the double bottom can be

[26]

loaded more nearly to the legal weight limits than the semitrailer with the loaded vans, for example.

A. I don't have that same understanding. The advantage of the doubles is the increased productivity. Trucking is a labor-intensive industry in which the drivers' wages amount to more than 50 percent of the cost of the operation. And anything that would improve his productivity; that is, the ability legally to carry more cargo, of course, results in more efficient operation.

* * *

[30]

Q. Is it still a fact, though, that big trucks cannot stop as fast as cars?

A. It's generally believe [sic] to be so.

Q. Wouldn't the same be true of ability to accelerate? Can't a car accelerate much more quickly than a big heavily loaded truck?

A. Cars in the mid-range and above, yes. Not necessarily subcompacts and others which, for reasons of fuel economy, have low-powered engines.

* * *

[32]

Q. Among other data produced in that study which I've read, they indicated that, while big trucks have fewer accidents than cars per -- I don't know, per vehicle, I guess, or per mile or per whatever; fatalities in truck accidents tend to be about double fatalities in car accidents. Are you familiar with any such data or similar data?

A. Yes. That's correct. The law of physics dictate [sic] that outcome. A larger mass collides with a smaller mass, the smaller mass fares less well.

* * *

[37]

- Q. Well, doesn't the extra articulation contribute to, well, the momentum of spinning or jackknifing or whatever you want to call it?
- A. No. Not really. The single trailer tends to pivot on the pin of the first joint and sweep, if you will. On the other hand, an articulated unit, as a difficulty, can have some lateral instability in the middle units which won't commit the entire unit to the sweep as quickly as a single-unit vehicle.

* * *

[Jurat]

* * * * *

PIESON DEPOSITION, Exhibit 2
SAFETY COMPARISON OF DOUBLES VS. TRACTOR-SEMI TRAILER OPERATIONS

	Number of Vehicles	Number of Miles (000)	Number of Accidents	Number of Injuries	Number of Fatalities	Amount of Property Damage (\$)	Accidents/Mile (000,000)	Injuries/Mile (000,000)	Fatalities/Mile (000,000)	Property Damage (\$)/Mile	Injuries/Accident	Fatalities/Accident	Property Damage (\$)/Accident
1973													
Doubles	3010	461,322	351	227	19	2,184,691	.761	.492	.041	.0047	.646	.054	6224
Tr-Seml	2145	193,552	182	140	15	1,274,416	.940	.723	.078	.0066	.769	.002	7002
1972													
Doubles	2899	434,580	287	233	21	1,512,333	.660	.550	.048	.0015	.833	.073	5269
Tr-Seml	2283	198,646	158	148	16	824,359	.795	.745	.081	.0041	.937	.101	5217
1971													
Doubles	2667	392,062	251	217	19	1,653,118	.640	.554	.019	.0042	.865	.076	6586
Tr-Seml	2312	202,135	156	142	10	1,004,991	.760	.699	.049	.0050	.910	.064	6442
1970													
Doubles	2508	337,911	211	180	21	1,260,067	.624	.533	.062	.0037	.853	.100	5972
Tr-Seml	2332	184,872	178	171	13	958,568	.963	.925	.070	.0052	.961	.073	5305
1969													
Doubles	1721	204,075	108	101	8	453,685	.529	.495	.039	.0022	.935	.074	4201
Tr-Seml	1651	124,329	105	124	8	485,494	.845	.997	.064	.0039	1.18	.076	4624

Data Represents:

IML Freight, Inc.
 Consolidated Freightways
 Pacific Intermountain Express Co.
 Pacific Motor Trucking Co.
 Boise Cascade Corporation
 Garrett Freightlines, Inc.
 Navajo Freight Lines, Inc.

DEPOSITION OF ERNEST G. COX

Filed October 17, 1975

[Caption Omitted in Printing]

* * *

DIRECT EXAMINATION

BY MR. AXELROD:

* * *

[3]

Q. What is your profession, Mr. Cox?

A. For a number of years I was with the Federal Government in charge of motor carrier safety and since my retirement from that position I have served as consultant to a number of organizations and people concerned with commercial motor vehicle safety, including American Trucking Association, where I serve as consultant to its executive level committee known as Safety Committee on Research and Environment, consultant to a national trade publication, I have served for many years and continue to serve as a member of the Board of Directors of the National Safety Council,

[4]

I have been a member of the National Committee on Uniform Traffic Laws and Ordinances for twenty-five years and continue to serve as the chairman of its subcommittee on vehicles, and continue participation in a number of activities involved in highway safety particularly.

Q. What was the year you retired from the Bureau of Motor Carrier Safety?

A. 1969.

Q. What was your last position, sir?

A. At that time I was Deputy Director, the Bureau of Motor Carrier Safety in the United States Department of Transportation.

* * *

[6]

A. I have been a member of the Board of Directors of the National Safety Council since 1952 except for one year. I am also a member of the National Committee on Uniform Traffic Laws and Ordinances and have been since 1950, presently chairman of its subcommittee on vehicles.

* * *

[7]

Q. As Deputy Director of the Bureau of Motor Carrier Safety, both for the Interstate Commerce Commission and later for the Department of Transportation after the reorganization, could you give us a brief summary of your duties?

A. Yes. Essentially my duties were to advise the Interstate Commerce Commission, to make recommendations to it with respect to the formulation and adoption of regulations necessary for the safe operation of commercial motor vehicles in interstate and foreign commerce.

* * *

[8]

Q. Who holds your position now at the Bureau of Motor Carrier Safety?

A. Kenneth Pierson.

Q. Are you familiar with a combination of vehicles of 65 feet, commonly known as double bottoms or twin trailers?

A. Yes, I am.

* * *

[9]

Q. During your tenure as Deputy Director of the Bureau of Motor Carrier Safety were twin trailers permitted to carry explosives?

A. No, they were not, until such time as a change in regulations was made.

Q. When did the change in regulations occur?

A. In 1961.

* * *

[10]

Q. So, this former regulation ruled out the transportation of explosives on twin trailers?

A. It prohibited it, yes.

Q. Do you know the origin of former Section 77.835?

A. No. That section was adopted in the form I have just referred to prior to my association with the Interstate Commerce Commission. It has been referred to in Commission reports which were adopted prior to my association with the

[11]

Commission back as early as 1935.

* * *

[12]

Q. So, you had in your power to yourself initiate a proceeding to allow the carriers carriage of explosives on twin trailers?

A. That is correct.

Q. Were you informally requested to do so?

A. Yes; on a number of occasions prior to 1960 motor carriers, particularly those stationed and headquartered in the western states, and their representatives, their attorneys and safety officials, from time to time urged that I initiate action to change Section 77.835[c] of the Code of Federal

[13]

Regulations.

Q. Did you do so?

A. No, I did not take initiative on my own account. I continued to resist this action for some time.

Q. Why did you resist this action?

A. I was skeptical, frankly, of the stability of the trailers in this type of configuration unless the length was adequate of the combination. In many states -- and let me make the point that regulations of this sort, of course, were applicable to motor carriers at

any place in the country, not merely in the states where sixty-five foot combinations were permissible -- and because I was apprehensive with respect to the stability of vehicles in combinations of less length than that, I was unwilling to initiate the change in the regulations.

Q. So, the filing of the formal petition by the motor carriers thus forced the issue; is that correct?

A. That is correct.

* * *

[14]

Q. What did you do with respect to this issue?

A. I made a careful analysis of the petition, itself, and particularly the accident data reported in it, because that data covered the activities of quite a number of motor carriers who were parties to the petition. The accident data in the petition covered a substantial period of time, thereby getting away from any erratic likelihood. I also made a study of our own accident data on motor carriers being required to report certain accidents to the Interstate Commerce Commission and we made accident investiga-

tions to quite some extent. And in addition to that I arranged for certain members of our field staff in the western states to make observations of the performance of twin trailer combinations which were then in extensive use except for explosive hauling and upon my direction these field staff members rode these vehicles and then made oral reports to me as to their observations.

Q. What did your field staff find?

A. They reported to me that their observations were such that they found the maneuverability of them was every bit

[15]

as satisfactory and actually superior in large measure to the 55-foot tractor-semitrailer combinations. Their reports to me in essence corroborated the statements made in the letter of the Oregon Highway Department of some years before that, on curved roads and mountain grades and this sort of thing, the combination vehicles, twin trailer vehicles, handled satisfactorily and were every bit as safe as other combinations if not even more so.

Q. What about stability in particular?

A. The stability was the prime factor in which I was interested, my previous apprehension having been that, particularly if this rear trailer was a short coupled trailer, it might not track satisfactorily and might not be as stable in maneuverability and handling, and their report to me was that the stability factor was satisfactory, the center of gravity situation relative to its length, or to the length of the rear trailer, was every bit as satisfactory, and from a stability standpoint, which, of course, to me meant the safety standpoint, there was adequate reason to be satisfied.

Q. What was your recommendation to the Commission?

A. I recommended that the Commission, on the basis of the analysis that I had made and the information I had been

[16]

furnished, and my inquiries with respect to the accident experience of other twin trailers in that period of time, that the Commission change its regulations to permit the transportation of explosives on twin trailers provided the rear trailer had a wheel base of not less than 184 inches.

Q. Was this change permitting twin trailers to carry explosives made by the ICC?

A. It was.

Q. And when was it made, sir?

A. In 1961.

BY MR. AXELROD:

Q. Now, I show you what has been marked by the reporter for identification as Plaintiff's Exhibit 4, and ask you if you can identify it?

A. I can. I do recognize it.

Q. What is it, sir?

A. Plaintiff's Exhibit 4 is a copy of that part of the INterstate [sic] Commerce Commission Regulations, Title 49 of the Code of Federal Regulations, Part 77.835, which changed the language of Paragraph [c] to permit transportation of

[17]

explosives in twin trailers provided each trailer had a wheel base of at least 184 inches.

Q. What is the relationship between the requirement of a wheel base of 184 inches and the present commonly used twin trailer combination of sixty-five feet?

A. In present times all combination vehicles incorporating two trailers, twin trailers, now

have wheel base lengths of at least that length.

Q. 184 inches?

A. 184 inches.

Q. I take it that the wheel base of 184 inches on each trailer plus the dolly plus the tractor equals the total vehicle length of 65 feet?

A. That is correct, yes. In order to have 184-inch wheel base on the trailers you would have to have at least 65 feet.

Q. What were your reservations with respect to shorter twin trailers than 65 feet that led to your recommendation that there be a minimum wheel base of 184 inches?

A. I had known of some occasions when very short trailers used as part of a two-trailer combination had displayed instability, had fishtailed a good deal, they were

[18]

often referred to in Michigan, where they were commonly used, as pups, and I was simply dissatisfied, or, unsatisfied, rather, that there had not been a sufficient demonstration that they would operate in a sufficiently stable manner and track adequately to avoid mishaps which, in my judgment, were not consistent with the care necessary for the transportation of explosives.

Q. But this phenomena, I take it, did not occur with the 65-foot twin trailer?

A. That is correct.

Q. Since the rule change in 1961 have explosives, in fact, been safely carried on twin trailers?

A. Yes; and in very great volume.

Q. From 1961 until your retirement in 1969 what was the safety experience of the Bureau of Motor Carrier Safety with respect to twin trailers?

A. I made a special effort to keep in touch with the accident experience of those firms which extensively used twin trailers, I also maintained a close contact with the operation with the safety officials of such agencies as the New York Thruway Authority, which began to permit twin trailers of very large size back in the late 1950's, and all of the

[19]

information which I could obtain, both from accident data reported to the Bureau of Motor Carrier Safety by motor carriers who were then subject to the reporting requirements, and all that I could learn from such authority as the New York Thruway Authority and my own accident investigation information, was such that twin trailers in this

transportation were every bit as safe and in some measure at least even safer than tractor-semitrailer combinations of 55 feet.

Q. Mr. Cox, what is your opinion today with respect to the safety of twin trailers as opposed to semis?

A. I am satisfied and convinced that they are every bit as safe.

* * *

[JURAT]

* * * * *

DEPOSITION OF A.S. COOPER

Filed October 20, 1975

[Caption Omitted in Printing]

* * *

DIRECT EXAMINATION

BY MR. AXELROD:

* * *

[3]

Q. And, Commissioner Cooper, are you the representative designated by the California Highway Patrol to appear at this deposition today pursuant to Rule 30[b] of the Federal Rules of Civil Procedure?

A. Yes.

* * *

[5]

Q. Commissioner, how long have doubles [65 foot twin trailers] been permitted in California?

A. They've been permitted since approximately 1950. And in 1959, they increased the length of doubles from the allowable length of 60 feet to 65 feet.

Q. How prevalent are doubles in terms of the total transportation system in California?

A. Our survey through the Department of Motor Vehicles of 1972, when we made this report, indicated there is approximately 200,000 doubles in California as compared to 372,500 semis.

Q. On what highways are doubles permitted in California, Commissioner?

A. They are permitted on all roads under our jurisdiction.

Q. Including two-lane highways?

A. Right.

Q. Are you familiar, or were you involved with the study published by the California Highway Patrol, "Accident

[6]

Experience of Double Bottom Trucks in California"?

A. Yes. At the time the study was made I was the Supervising Inspector at that time in charge of the Department's Logistics and Staff Services functions and I directed the study to be accomplished for Commissioner Pudinski.

Q. Commissioner, I show you what has been marked as Exhibit 2 and ask if you can identify this document as the study to which I have just referred?

A. Yes, this is the study.

Q. Could you describe that study, Commissioner?

A. Yes. During the latter half of 1972, the study was made of 31,883 accidents involving fatalities or injuries on highways under the jurisdiction of this Department.

Three hundred and fifty-two of these accidents involved double bottom trailers and 609 involved semi-trailers.

We studied these accidents with respect to the percentage of doubles and semis on our highways, the number of miles traveled by doubles and semis, and then compared the accident date of doubles and semis with each other and with the other types of vehicles involved in the 31,883 accidents.

Q. What were the findings in your study with respect to the percentage of doubles involved in accidents as compared to their numbers in the entire vehicle population in California?

A. Doubles are under represented in accidents when compared to their portion of all motorized vehicles on California's State-maintained roadway system. They are approximately 1.5 per cent of the motor vehicles but were involved in only 1.1 per cent of fatal and injury accidents.

[7]

A. * * *

From these comparisons, it appears as if the safety record of doubles is as good, if not better, than those of the other motor vehicle types.

Q. What were the findings with respect to the number of accidents per million miles traveled for doubles and semis?

A. Doubles and semis both had an accident rate of .5.

Table 2 shows that only the commercial bus accident rate, .4 fatal and injury accidents per million miles of travel, was lower than the .5 rate established by tractor-semitrailers and doubles.

Other trucks and all other motor vehicles trailed at .7. Thus, in terms of accident rates, doubles appear to be one of the safest vehicles on the road. They are at least as

[8]

safe as the tractor-semitrailer in this respect.

Q. Does the study also show accident rates for two trucking companies per million miles for all accidents including personal injury as well as property damage accidents?

A. Using the accident rates of trucks owned by the Pacific Intermountain Express Company [and Consolidated Freightways]...

...the conclusions drawn regarding the accident frequency of doubles and tractor-semitrailers appear to have been confirmed. Although the magnitudes differed, the ordering remained constant from source to source. In each case, the statistics indicate that the doubles are as safe as tractor-semitrailers.

In fact, they indicate a lower accident rate among doubles than among tractor-semitrailers.

- Q. Where doubles became involved in an accident, does the study show the accidents were more severe in terms of death and injury per accident than semis?
- A. With the exception of commercial buses, doubles displayed little basic differences from the other vehicle types using this measure of severity.

* * *

[12]

- Q. Are defective brakes a significant problem with doubles?
- A. No. The statement in this regard on Page 24 of the study, and elsewhere, appears to be an unwarranted assumption.

Statistically, brake violations in the study as to both doubles and semis are so negligible in actual number that they are insignificant.

Our enforcement and accident investigation experience shows no difference between doubles and semis with respect to brake violations. Even if there was a difference, it would be an individual maintenance problem.

Our design studies show the braking systems on doubles to be as effective as those on semis. Our experience with doubles and semis show that brake violations are caused by poor maintenance irrespective of vehicle types.

- Q. To what studies do you refer to support your statement that the brake system on doubles is as effective as the braking system on semis?
- A. The study referred to on Page 33 of the study, as well as the other studies I am familiar with.

* * *

[14]

- Q. What was the data in your study with respect to handling characteristics?
- A. The analysis is aimed at maneuverability, braking and passing time.

Maneuverability: When you talk about maneuverability, one of the things you must talk about is off-tracking.

Off-tracking is the current standard measure of maneuverability used by the designers of highways. It measures the inability of the rear wheels of a vehicle to follow the path established by the front

wheels in a turning maneuver. The greater the amount of off-tracking the more roadway width is needed to accommodate the vehicle negotiating the turn. This is critically important when turning on city streets and entering freeway ramps.

In a study conducted by the California Division of Highways, a maximum tracking width of 24.7 feet was required in a 60-foot radius turn by a 60-foot, five-axle tractor-semitrailer. The 24.7 feet was greater than the tracking width required of any other legal vehicle in California including the 65-foot double. It appears that in terms of off-tracking, the 65-foot double has greater maneuverability than the 60-foot, five axle semitrailer.

* * *

[15]

As an added factor, doubles are able to detach one trailer for in-town use. This greatly improves their handling

[16]

and it makes them much more maneuverable than the 60-foot tractor-semitrailer.

Braking: A study conducted by the California Highway Patrol in 1972, proved that doubles loaded with 75,600 pounds traveling at 20 miles per hour had a stopping distance of 27 feet. This was well within California's Vehicle Code requirement of 50 feet for emergency stops. It was also well within the Federal standard of 33 feet.

The requirement that a vehicle not swerve too greatly to either side during a stop was also met by the double. During the stop, the double remained within a twelve foot traffic lane.

Passing Times: Although passing time has not been measured by the California Highway Patrol, a study by the U. S. Department of Commerce indicated that vehicles up to 75 feet would not have a significant effect upon the safety potential of the usual passing operations on a two-lane facility. As such, the time required to pass a 65-foot double would not create a more significant hazard than the time required to pass other trucks and buses.

Support for this conclusion came from investigations conducted by the U. S. Bureau of Public Roads. They found that it took a

car traveling 60 miles per hour, two-thirds of a second more to pass a 65-foot double traveling at 50 miles per hour than to pass a 55-foot tractor-semitrailer traveling at the same speed. This two-thirds of a second involved slightly more than 58 extra feet of distance.

* * *

[17]

Q. What is your opinion at the present time with respect to whether there is a difference in safety between doubles and semis?

A. Doubles are safe as semis. There is really no difference between them. Both are extremely safe vehicles and consistently among the vehicle types with the lowest accident rates. The accident rates for both doubles and semis are much lower than other trucks and the auto.

* * *

[JURAT]

* * * * *

DEPOSITION OF COLONEL JAMES C. CRAWFORD

Filed October 10, 1975

[Caption Omitted in Printing]

* * *

[3]

DIRECT EXAMINATION

BY MR. AXELROD:

Q. Would you state your full name and title, sir?

A. Colonel James C. Crawford, Chief, Minnesota State Patrol.

* * *

[4]

Q. Are twin trailers permitted in Minnesota?

A. Yes, they are.

[5]

Q. How long have twin trailers been permitted in Minnesota?

A. I believe about July 16, 1973.

Q. On what highways are twin trailers permitted in Minnesota?

- A. Well, we designate the particular route numbers--the Highway Department designates those. Generally they are divided highways having two or more lanes of travel in each direction. Some other roads are designated as connector roads between these multi-lane highways and some access roads to the terminals for the trucking industry.

* * *

[6]

- Q. Now I take it from Exhibit 1, Colonel Crawford, which is the list of highways in Minnesota on which twin trailers are permitted, that twin trailers are permitted on I94 in Minnesota and connecting routes all the way from the North Dakota border to the Wisconsin border?

A. That's correct.

- Q. Colonel Crawford, what has the experience of the Minnesota State Patrol been with respect to the safety of twin trailers as opposed to semis?

A. Well, we haven't been able really to determine any difference in the safety factor from the twin trailers versus the semi. During the period of time that we were considering twin

trailers in Minnesota the plus side of the safety factor that we were most concerned

[7]

with was the ability of that twin trailer to be broken down in the high volume metro areas of the State of Minnesota, and that the trackage of the vehicle and the ability to be broken down was what we used as a main consideration.

- Q. What was the trackage of twin trailers as compared to semi trailers?

A. Well, because of the length of the semi trailer the trackage broken down into two units, the trackage was a lot better. You didn't have the problems of lane use on the turns at intersections. The trailers track the tractor better.

- Q. In the twins?

A. In the twins, yes.

- Q. Do you have any opinion as to how twin trailers fare under adverse weather conditions in Minnesota, such as snow or ice, when compared to the semis?

A. Well, we haven't been able, again, in our -- the figures that we have in the State of Minnesota, to make any determination of any significant difference. We have reviewed the

twin trailer accident involvement and proportionately, I guess, there's no significant difference between the two.

Q. As a result of the safety experience in Minnesota with respect to twin trailers, would you have any hesitation

[8]

in recommending to other jurisdictions that twin trailers be permitted in those jurisdictions?

A. No. I don't think so. I think the use of the twin trailer in the State of Minnesota has not caused us any problem. The breakdown of the units and the load has, I think, helped the congestion in the highly congested areas.

Q. You would recommend them to other jurisdictions?

A. Yes, I would.

Q. Why, in your opinion, are twin trailers as safe as semis, considering particularly their extra 10 feet in length?

A. Well, the main significant point is the fact that they are broken down, not one -- you know, two continuous units, and because of that, because of the point of turning of these vehicles, they track better than a 40-foot trailer on to a semi.

Also, you have a better braking system. You have more brakes being able to be applied on the double bottom combination and a better braking system because of the spread of the axles of the vehicle.

Q. How has the public reacted to twin trailers in Minnesota?

A. Well, I think at the time that the bill was being proposed, I didn't receive -- I haven't received any comments either adverse or pro on the twin trailer proposal. We haven't received any complaints from the motoring public

[9]

relative to their opposition or any complaints about the selection -- the twin trailer vehicles themselves.

* * *

CROSS-EXAMINATION

BY MR. HARRIMAN:

* * *

[17]

A. But I tried to explain that during the discussions that occurred between us at the

time the twin trailer bill was being discussed it was felt that if we could cut down by the splitting of the twin trailers into smaller single units, we were going to cut down the number of 55 foot vehicles that were traveling to deliver these goods in the rural areas on these roads that you're talking about, and we felt that that too was a benefit. That if we could cut down on the number of miles traveled by the longer rigs, by making the double bottom split at terminal points, that the motoring public in Minnesota was going to not only benefit from the twin trailers operating on those roads, but would have a side benefit of the breakdown of that unit, and I -- I don't know if the term "breakdown" disturbs you, but when I say "breakdown," I mean the taking apart of -- [of the two trailers]

* * *

[19]

Q. I see. Our law allows a semi trailer rig up to 55 feet. Is that what your law allows?

A. We had generally the semi trailers with 55 feet. We did have an exception to that which was, I guess, caused by the State of Wisconsin allowing the motor transports,

[20]

because of their terminal points on Lake Michigan and also their manufacturing factories in Janesville, that they allowed the delivery trucks that deliver automobiles excess length, so they came and the legislature of Minnesota granted them authority to exceed the 55 feet.

* * *

[21]

REDIRECT EXAMINATION

BY MR. AXELROD:

Q. I take it that although you believe that length is a safety consideration, that in terms of the 65 foot twin trailer and the 55 foot semi trailer, length is not a

[22]

consideration in terms of the relative safety of those two vehicles?

A. No. You're really only talking about ten feet, you know, difference, and the passing time for that ten feet is not that significant.

* * *

[JURAT]

* * * * *

DEPOSITION OF FRANCIS C. MARSHALL

Filed October 20, 1975

[Caption Omitted in Printing]

* * *

DIRECT EXAMINATION

BY MR. AXELROD:

[3]

Q. And what is your title?

A. Assistant Commissioner, Minnesota Department of Highways.

* * *

[8]

Q. What has been the experience of your department with respect to twin trailers from the time they were first permitted in Minnesota?

A. My own personal experience was that the first winter after they became legal I requested of

all our District Traffic Engineers to report any twin trailer accidents to me and I only received a report of one that winter, which was not the fault of the twin trailer configuration, so from that first winter's operation I concluded that they were at least as safe and probably safer than the traditional 55 foot semis we were familiar with and that had been legalized for a number of years in the state.

Q. And is that your opinion at the present time?

A. Yes, it is.

* * *

[9]

Q. Do you have any data or opinion as to how twin trailers fare under adverse weather conditions in Minnesota, such as snow or ice, and particularly in adverse weather conditions as compared to semis?

A. Well, in adverse weather conditions the two major problems would again be [sic] the one I already identified, jackknifing. Second would be braking power, and with a twin trailer having a better configuration to handle this on dry pavement, it just follows that it would also have a better safety record on the glare ice or slippery pavement also.

Q. As a result of the safety experience with respect to twin trailers in Minnesota would you have any hesitation in recommending to other jurisdictions that twin trailers be also permitted in those jurisdictions?

A. No. I wouldn't have any problem with them at all.

Q. You would recommend them to other jurisdictions?

A. Yes.

* * *

REDIRECT EXAMINATION

BY MR. AXELROD:

[14]

Q. Has there been any appreciable difference in Minnesota of motorists in passing a 65 foot twin trailer as opposed to the 55 foot semi?

A. We are talking ten foot longer length trailer, or total combination, and in passing we are talking probably a second or so, and I don't think -- we haven't heard any complaints from the people on anything in this respect.

The greatest complaint we hear from passing commercial vehicles is the blow-out

from the wheels of snow and rain causing poor visibility while you're passing, and I have observed on twin trailers that they seem to set up more of a vortex because of the two separate trailers. I don't know if this is scientifically true, but just on my own observation, that vortex caused between the two trailers seems to hold that blow-out in a little more.

Q. And results in less splash and spray than the semi?

A. Yes. That's been just an observation of mine as I drive down the highways, and because of my interest in trucks

[15]

I do pull in behind them and watch them for a while and that's been my experience. There seems to be this vortex.

* * *

[JURAT]

DEPOSITION OF JAMES KARNs
 Filed September 18, 1975
 [Caption Omitted in Printing]

* * *

DIRECT EXAMINATION

BY MR. VARDa:

[3]

Q. By whom are you employed?

A. The Wisconsin Department of Transportation.

[4]

Q. And what is your present position?

A. Research Analyst in the office of the secretary of the Department.

Q. How long have you been employed by the Department of Transportation or other Wisconsin transportation agencies?

A. Since 1951; first in the Motor Vehicle Department which became ultimately part of the Department of Transportation.

Q. Can you give a brief synopsis of your career and experience in that employment?

A. Well, briefly, I came to the State with the State Patrol which was part of the Motor Vehicle Department. I eventually became a

captain in charge of staff operations and headed the Academy in the patrol. I was then appointed Motor Vehicle Commissioner and I was in that capacity for -- in excess of 12 years.

Q. When was that appointment made?

A. 1959, January of 1959.

For the past four years until July I have been special assistant for safety and law enforcement to the secretary.

Q. Did you ever have occasion to consult with representatives of other states or review safety records of other states in relation to the use of 65-foot twin trailers?

A. Yes, I have.

Q. What were the results of your contacts and surveys?

A. In most occasions the requests for information were -- I'm going back some years now -- were met with indications from the people involved that there was no safety problem. That record and those studies were not readily available but there did not seem to be any difference in safety records. In fact, some of the western states testified before several committees of the Legislature and expressed surprise that the question would be

asked. Most of the operations were in the western states of extensive double bottoms.

Q. Did you at any time make a recommendation based upon that type of analysis as to the introduction of twin trailers in Wisconsin?

A. Yes. In my capacity as Motor Vehicle Commissioner I recall back in the mid-60's there was a bill before the Legislature and I was asked about the safety aspect of it, and I believe a synopsis of my comments would be that I saw no reason not to approve such legislation because the safety records of these vehicles [the 65' twin trailers] did not warrant any other action.

* * *

[JURAT]

DEPOSITION OF CLAUD R. McCAMMENT

Filed September 9, 1975

[Caption Omitted in Printing]

* * *

DIRECT EXAMINATION

BY MR. AXELROD:

* * *

[4]

Q. What is your occupation, Mr. McCamment?

A. I'm retired from the [Kansas] State Highway Commission, which I was Safety Director. At the present time I have been quite active continuing in traffic safety, as I was appointed approximately two and a half years ago by the then Secretary of Transportation, Volpe, as a member of the Citizens' Advisory Committee on mass transit, mass transportation, they call it, to the then Secretary Volpe and I continued on that and continue on that Committee with Secretary Brinegar to the present Secretary. In March of this year I was appointed to the Citizens' Advisory Committee by President Ford as advisor to the present Secretary of Transportation; in fact, it was

[5]

Brinegar at the time of the appointment and then the appointment was continued on under

the present Secretary of Transportation. And I have continued to be a member of the Executive Committee of A.A.M.V.A. even in retirement because of their bylaws, and I've continued to be a member on a consultant basis to the Vehicle Safety Equipment Commission.

Q. What is A.A.M.V.A.?

A. A.A.M.V.A. is the American Association of Motor Vehicle Administrators.

Q. And have you served as an officer of any of these organizations?

A. I was President of the American Association of Motor Vehicle Administrators and I was President of the State and Provincial Safety Coordinators, and I was Treasurer for three years of the Vehicle Equipment Safety Commission, and I was a member of the Uniform Laws Committee, representing the only membership from the State of Kansas, for 12 years.

* * *

[9]

A. Before 1965 in the State of Kansas we did not permit one inch of operation in the State of Kansas of any type of truck over 55 foot in

length, nor did we permit, because of that, the use of any twin trailers on any of our highways or city streets in the State. However, in 1965 the Kansas Legislature passed a bill to authorize combination of vehicles between 55 foot and 65 foot long on selected highways and routes as approved and designated by the Kansas Highway Commission. Now, I'd like to say at this time that I appeared on five different occasions before State legislative committees, both in the House and the Senate, and testified very strong against this bill at all these legislative hearings because I had the, what you might say the preconceived notion that 65-foot twin trailers were not as safe as the other types of trucks or not as safe as the 55 foot semitrailers. However, the Highway Commission saw fit after the bill was passed to delegate to our department the responsibility of conducting these studies to determine over which routes,

[10]

if any, that we could say they could be safely used for the operation of the twin trailers without jeopardizing the public safety or convenience of the general public and the other users of the highway.

Q. Could you describe the study which you performed on the 65-foot twin trailer?

* * *

A. Yes. I called in my traffic engineering section heads and we called in all the traffic engineers finally, we called in the heads of the enforcement section and special permit officers and special permit people, and we summarized how best we thought we could make any type of study, and we called in the people that headed the Central Accident Records Bureau and asked their indulgence in following up for us by setting aside every accident that might occur to any

[11]

twin trailer on any route or at any other location that they traveled in the State of Kansas....[W]e concluded that the best way to make this study was for our people, without them knowing it, in unmarked cars to follow these units at a distance and then up close at

[12]

times and continuously follow these completely across the State of Kansas, either north and south or east and west.

[13]

...[W]e finally studied every section of the highway system over which they had sought approval, and there was some six thousand miles that were studied, and most of the sections that we studied had terrain that

[14]

was hilly, was curvy, and we found that the units, the people were able to pass the units, much to our amazement, without any great difficulty. We found that the units tracked much better than the semitrailer units. We found that their maneuverability from all our observations, with no exceptions, the maneuverability of the unit, because it seemed to break in the middle and was on a pendle (phonetically) type deal there, that they were able to maneuver on some of the curves much, much better and stay on their side of the curves much better than the semis at the same speed. We also found that the general performance of the equipment was--whether it was just our thinking on the matter--but after following--in addition to this we began following semi units to see, and the hill performance of these units were much better even than the semi units.

* * *

[15]

Q. What were your final recommendations to the Highway Commission?

A. Our final recommendations were made...in January of 1967, asking the Commission to grant authority for these units to use any State highways in Kansas

* * *

[19]

A. ...[T]he conclusions reached were that these vehicles, these twin trailers that we had opposed initially to a big extent were much easier to maneuver on our highway system, their maneuverability was much better than even the semitrailers and much better than the farm trucks and others, and that their tracking ability was much improved, they followed, the units followed so much better, especially on curves, and we were much interested in this because in our previous accident studies of trucks we had found that a number of the accidents occurred on curves and where the truck would leave the curve and--or be on the wrong side of the center line. Also their general safety performance of the

general public in passing these vehicles, we found they didn't seem to be as afraid of these vehicles in passing, if you--if that word is a proper one to use--as they were of trying to pass the semis on these two-lane highways, much to our amazement.

* * *

[21]

A. ...Our records show that there are three times as many semitrailer units on the road as there are twin trailer units, but even when this is adjusted we found that the twin trailer units still had a much, much better accident record. Now, you want to remember this is approximately ten years after the initial study was made. We were continuing and the department has continued to monitor all accidents involving trucks, semitrailer and twin trailer.

* * *

[24]

Q. Could you compare the 65-foot twin trailers with the 65-foot [auto] carrier?

A. Well, on an accident record basis the twin trailer is a much safer operation in regard to the mileage that they

[25]

cover and the mileage that the twin trailer covers (sic).

Q. That the 65-foot twin trailer is safer than the auto carrier?

A. Much safer in operation than the auto carrier is.

* * *

CROSS EXAMINATION

By Mr. Harriman:

* * *

[34]

A. ...I don't know what other people are thinking but I know what 62 people in this state that did the study work, I know what their thinking was. There wasn't an adverse opinion in the whole group.

* * *

[35]

A. ...We followed these units under all types of adverse weather conditions. The semi puts out a much greater spray than the twin trailers. Now, I'm not a scientist, I don't know just why, but in our study we found

that the twin trailers did not put out nearly as much spray and muck and stuff like this as did the semi units; now, I don't know why, I'm not going to argue this point. We did it in actual observation, we observed them in fog, we observed them under all adverse weather conditions, on ice, snow, you name it, and we did this because we actually wanted to know what unsafe, if there were, any unsafe characteristics there were or what differences there were.

* * *

[Jurat]

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DEPOSITION OF FRED J. MYERS

Filed October 1, 1975

[Caption Omitted in Printing]

* * *

DIRECT EXAMINATION

By Mr. DeWitt:

* * *

[9]

A. ...I served on that committee [Committee No. 5, Highway Research Board] until I transferred west.

Q. What did the committee conclude, if anything, or recommend?

A. Well, I think it is safe to say that the results of their work formed the basis, directly, for the recommendations that are contained in the federal size and weight report, as I recall it.

I believe that is House Document No. 253 of the Eighty-Seventh Congress.

This study had been directed by the Congress when they passed the 1956 Federal Aid Act, and the Bureau of Public Roads used all of the data compiled by the committee of economics and motor vehicle sizes and weights to help them in reaching their conclusions as to the size and weight standards that would be appropriate for at least the interstate system.

Q. I see. In other words, it was the work of this committee and their recommendation which were utilized in deciding what the weight and size limitation should be--

A. Yes, definitely.

Q. (continuing) -- on the current interstate; is that correct?

A. Yes.

* * *

[10]

Q. First, just tell me, in very general terms, in a couple or two or three sentences, what generally you did during your time with Western Highway Institute, then I will ask you in more detail.

A. As a Director of Research I was involved in all of the various activities of the Institute,

[11]

which covers studies of motor vehicle sizes and weights, highway finance and taxation, highway safety, legal matters relating to those aspects of the problem, not that I am an attorney, but it is necessary in our operation, or in the operation of the Institute, that the technical people work very closely with the legal people and vice versa, and in doing our work for the state association, state trucking associations, review of legislation that would be proposed either by the legislature or by interim committees or by administrative people

in the states, review them for the effect upon the industry in the state, or to review proposals, legislative proposals that the industry might be sponsoring, introducing, getting into the subareas of environmental problems, noise, engine emissions, splash and spray, anything relating to the operation of commercial vehicles of all types and sizes operated by all different types of carriers.

* * *

[12]

Q. Does WHI [Western Highway Institute] have joint committees with the Western Association of State Highway and Transportation Officials?

A. Yes.

Q. Do these joint committees often suggest research projects for WHI to undertake?

A. Yes, yes.

Q. Do members of the Western Association of State Highway Officials often cooperate in the conduct of your research projects; that is, WHI's research projects?

A. Yes, very closely.

If I may add further, these projects are usually suggested to cover problems that are of joint interest to the highway people, as well

as to the trucking industry, and so they are very -- they do cooperate, and many times actually participate directly in the work.

Q. Do state and federal highway transportation officials

[13]

request, and upon such request, does WHI supply copies of your research and engineering reports?

A. Yes, rather extensively.

* * *

Q. In the trucking industry what is meant by the term "cubing out"?

A. Well, cubing out, that is the condition where the density of freight that is loaded is low enough so that the container, whatever type of body it might be, is filled before the gross weight limit is reached.

Q. What is meant by the term "weighing out" or "grossing out"?

A. Well, that would be just the opposite, where the density of freight is great enough that the gross weight limit is reached before the container is completely filled.

* * *

Q. Let me ask this question: Is WHI a lobby organization?

A. No, we do no

[14]

lobbying.

Q. Do you only appear before these bodies upon request of an agency?

A. An official request, that is, if I may further explain by that, it can come from any source, just so it is official and not like from the State Trucking Association or the industry.

* * *

A. ...Years ago even some of the commodities that, in themselves, had a low density, they would be packaged in cartons or in such a fashion that the overall density would still remain quite high, but now the trend has been to the packaging of the individual item utilizing packaging materials that is [sic] also lighter, lower in density, styrofoam, if that's one of the things they use, the trend has been in that direction so that, for example, in California the average density of general

freight is now very close, if not there or below, to about 11 pounds per cubic foot.

Q. What can we compare that with? What did it used to be?

A. Perhaps the best comparison might be with the density [sic] required to cube out a typical semitrailer, which is about 15 pounds per cubic foot.

Now, if I may add further, I don't mean that there isn't

[15]

still high density freight carried by general commodity carriers. Many of them transport petroleum products, which is a relatively high-density commodity.

But general freight, which was the point of your question, the trend is toward the lower average density and creating the need for cube.

* * *

[16]

Q. Did the WHI conduct research and publish a report dated February 1970 on the offtracking characteristics of trucks and truck combinations?

* * *

Q. Could offtracking be defined as the amount of variation between the path traversed by a following wheel as compared to the preceding wheel?

A. Yes. But more specifically, it would be the difference in the path of the front wheel and last wheel in the combination, the total offtracking.

Q. This would normally be in connection with some kind of a curve; is that correct?

A. Right.

Q. Now, looking at this document we have referred to, "Offtracking Characteristics of Trucks and Truck Combinations," does Table 7 at page 47 indicate that that [sic] the maximum offtracking of a twin trailer is three feet as compared to four feet for a semitrailer?

A. That is right, yes.

* * *

[17]

Q. And does this table relate to a 165-foot radius curve?

A. That is right.

Q. In other words, there might be a different amount of offtracking if it were a different radius curve; is that correct?

A. That is right. The radius of 165 feet was chosen because it is quite a typical curve on the off and on ramps at the interchanges on the interstate system.

Q. What is the significance of offtracking as it relates to traffic safety?

A. I believe the principal if not the only significance of offtracking is the fact that if there is enough offtracking the vehicle will encroach on the other lane and create a hazard to traffic, on a two-lane highway, coming from the opposite direction or on a multiple lane facility, the vehicle that is traveling in the same direction in that lane.

Q. Is offtracking a standard measure of vehicle maneuverability?

A. Yes.

* * *

[18]

Q. Does it take longer to pass a 65-foot twin trailer than to pass a 55-foot semi?

- A. Yes.
- Q. If the passing vehicle is going 10 miles an hour faster than the twin trailer, how much additional time does it take to pass a twin trailer as compared to a vehicle going 10 miles faster than a semitrailer?
- A. If I recall correctly, less than a second. About two-thirds of a second, thereabouts.
- Q. On a four-lane interstate highway where, by design, passing vehicles do not face opposing traffic, do you have an opinion as to whether or not this two-thirds of a second difference is a significant safety factor; do you have an opinion?
- A. Yes, I do.
- Q. What is your opinion?
- A. I don't think it is of any importance on a multiple lane highway when the vehicles are traveling in the same direction.
- [19]
- Q. In your opinion does the additional ten feet of length, with a twin trailer over a semi, add any safety hazard at all on a four-lane interstate highway?
- A. I don't believe it does.
- Q. Are twin trailers more or less maneuverable than semis?

- A. I believe they are more maneuverable in a number of respects.
- Q. Why are they more maneuverable?
- A. Because of the dimensions of the individual units giving the driver, I believe, better control, less offtracking, as was mentioned, the fact that in an emergency the one trailer could be dropped, or for use in urban areas where the one trailer can be dropped and distribution of freight or pickup of freight could be done with the single 27-foot semi.
- Q. Does the fact that there's less offtracking make it possible for a twin to turn more sharply than a semi without invading another traffic lane?
- A. Yes, yes.
- Q. Do twins have any advantage with respect to a semi, with respect to weight distribution of loads?
- A. Yes, I think quite definitely.
- Q. Why?
- A. It is possible to load the twins so that the rear trailer, the axle weights of the rear trailer would be less than those of the unit in front, which is a desirable feature in connection with braking.

Other factors are involved such as the effect on pavements.

Q. Is this because it is spread out over a greater length?

A. Yes, that is one reason.

Q. Does that avoid a concentration of weight?

A. Yes.

* * *

[21]

Q. Might a semi have a lesser number of axles than the twin?

A. Yes, a semi could have three, four, or five axels, using a 40-foot box.

Q. What is the minimum for twins, minimum axles for a twin?

A. Five.

Q. Is there any difference in the braking dynamics of twins and semis?

A. Yes, very definitely.

Q. Why is this true?

A. Well, I think the principal difference would be the fact that on twins they now use almost universally the fast air transmission valves which allows the air to reach the rear axles at least by the same time they reach the axles further up front which is a very definite

factor in stability in braking and braking distance.

Furthermore, as I mentioned, it is customary to load the rear trailer of twins lighter, and when the axle has less weight on it, you are going to get faster braking at that axle.

* * *

[22]

Q. I show you a document marked Exhibit 3 purporting to be a copy of WHI Research Summary Series No. 2-71 dated December 31, 1971. Is this a true copy of that summary?

A. Yes.

Q. Does this study show that the braking capabilities of the twins meets the requirements of M.V.S. 121?

A. Yes, it does.

Q. What do you mean when referring to M.V.S. 121?

A. That is one of your federal motor vehicle safety standards relating specifically to the braking performance of heavier vehicles.

Q. In the studies of braking with which you are familiar, how does the stopping distance of twins compare with the stopping distance of a semi?

A. All information that we have, all data that we are able to obtain, indicates that all other factors being equal, the twins will stop faster and with greater stability than the semi.

Q. Are you familiar with a document entitled, "Recommended Policy on Maximum Dimensions and Weights of Motor Vehicles To Be Operated Over the Highways of the United States"? [Marked Exhibit 4]

A. Yes, that is the recommended policy of the American Association of State Highway and Transportation Officials.

* * *

[23]

Q. Now, I will ask you to look at Section 2.06.05.

A. Length. Okay.

Q. Yes. Right here.

Does that section of this policy recommend states authorize 65-foot twin trailers?

A. It does.

Q. Do you know whether the Bureau of Public Roads, which is now known as the Federal Highway Administration, approves of 65-foot twins?

A. They do.

Q. Does the Federal Highway Administration--I'm sorry. Did the Bureau of Public Roads previous [sic] approve of 65-foot twins?

A. Yes.

* * *

Q. Do you know whether the Bureau of Motor Carrier Safety approves of 65-foot twins?

A. I am certain of that. They do.

* * *

[24]

Q. From your background as an engineer and highway researcher, have you formed an opinion as to whether or not 65-foot twins are as safe as 55-foot semis on divided interstate highways?

A. I have.

Q. What is that opinion?

A. I believe that all factors considered, the twins are a safer type of vehicle than the semi.

* * *

[25]

Mr. DeWitt: Now I show you what has been marked Exhibit 5, purporting to be a WHI Research Summary Series 1-74 dated February 25, 1974. [Entitled "Consumption of Diesel Fuel in Larger Combinations of Vehicles"]

Q. Can you identify this as such a Research Summary Series?

A. Yes. It is my own work.

Q. Did you do the research on this?

A. Yes.

Q. In your opinion, would permitting the use of twins by a state have any impact on fuel consumed by trucks in that state, assuming that the same amount of cargo was being shipped through that state before and after the permission to use twins had been granted?

A. There would definitely be a savings in fuel.

Q. Why would that be true?

A. Because of the additional one-third capacity in the twins versus the semi, and the increase in fuel consumed per trip would not be in the same proportion as the increase in capacity, and while there is an increase in fuel per trip, the number of trips would be reduced, with the result that your total fuel required to move a given volume of freight would be less.

* * *

CROSS EXAMINATION

By Mr. Harriman:

* * *

[28]

Q. Well, this condition of splash and spray on the windshield of the passing vehicle would be more significant in passing a long vehicle as compared to passing a short vehicle, would it not?

A. Yes.

Q. And that is the length of time that the passing vehicle is engaged in the passing process which would be increased in passing a long vehicle over passing a short vehicle?

A. Dependent upon whether the spray pattern and the intensity of spray continues for that time period or that length of the vehicle.

The tests have demonstrated that certain types of vehicles, the principal effect is actually up at the tractor, and the effect diminishes as you go back past the other wheels, and this condition varies with the type of vehicle, so it would not be possible to make a general statement in answer to your question that in passing the doubles it would

be a more hazardous condition because of the spray than in passing even a shorter vehicle of another type.

* * *

FURTHER EXAMINATION

By Mr. DeWitt:

* * *

[35]

Q. With respect to this problem of jackknifing which you mentioned, does the second trailer on a twin do anything to either help avoid jackknifing or make jackknifing more likely when braking is being done, stopping the vehicle?

A. All tests have indicated or shown rather conclusively that the addition of another trailer or trailers tends to dampen down the effect of jackknifing of the entire combination.

Q. Is that what you mean by better stability during braking; is that one of the things?

A. Stability during braking is defined as the ability of that vehicle to remain

[36]

within its lane and not encroach upon the lane that might be occupied by another vehicle.

Q. And jackknifing, of course, if it is sufficient, would move it into the next lane?

A. Right

Q. Is there a technical or engineering reason for this phenomenon?

A. Yes, I believe so.

Q. What is it, in your opinion?

A. It is the way in which the forces at the various points of articulation work to counter the tendency of the wheels or the axles ahead to deviate from a straight path.

Q. Is inclement weather, such as conditions of snow, ice, high wind, any more dangerous for a twin than for a semi?

A. I don't believe so.

* * *

[Jurat]

MYERS DEPOSITION, Exhibit 1

Fred J. Myers

Oregon State University, 1930-35

Civil and Highway Engineering majors
BS in Civil Engineering, 1935

Oregon State Highway Department, 1935-42

Assistant Traffic Engineer on termination

Work on all phases of motor vehicle ownership and operation, including accident analysis, highway safety, traffic volume and composition, equipment performance, highway transportation economics, motor vehicle taxation, and related subjects.

United States Government, 1942-52

Bureau of Investigation and Research, 1942.
Highway use and tax studies.

Office of Price Administration, 1943-46.
Automotive Supply Rationing Division.
In charge of program of car-sharing at 40,000 war plants.

Bureau of Public Roads, 1946-52. Division of Research. Engineering assistant to Chief of Highway Finance and Tax Division.

On leave from Bureau of Public Roads 11 months in 1951 on Point IV program in Republic of Columbia as Highway Plan-

ning Consultant to Minister of Public Works.

Transferred to Western Regional Headquarters, Bureau of Public Roads, San Francisco, June, 1952. Reviewed Federal Aid highway programs, plans, and specifications in 13 Western States. Resigned when Western Headquarters, BPR, was abolished.

While with Bureau of Public Roads, served on two committees of Highway Research Board.

1. Economics of motor vehicle size and weight.
2. Cost of Motor Vehicle Accidents.

Western Highway Institute, 1953-75

Retired upon reaching age 65 in March, 1975

Currently self-employed. Highway Transport Research Service

Registered professional engineer, No. 2460, Washington, D.C.

MYERS DEPOSITION, Exhibit 3
[Letterhead of Western Highway Institute]

December 31, 1971

No. 2-71

CALIFORNIA BRAKING TESTS SHOW
BRAKE BALANCE PLUS FAST AIR TRANSMISSION
AND RELEASE MEETS BRAKING PERFORMANCE
REQUIREMENTS OF FEDERAL MOTOR
VEHICLE SAFETY STANDARD NO. 121
FOR PRIMARY SYSTEM

[1]

The lower accident rate for the conventional western doubles combinations indicates its superior safety characteristics. When operated with properly balanced

[2]

brakes which are applied with a minimum of lag time, these combinations more than meet the braking performance requirements of Federal Motor Vehicle Safety Standard No. 121.

MEYER'S DEPOSITION, Exhibit 4

RECOMMENDED POLICY ON
MAXIMUM DIMENSIONS AND WEIGHTS
OF MOTOR VEHICLES TO BE OPERATED
OVER THE HIGHWAYS OF THE
UNITED STATES

Prepared by The Subcommittee on
Highway Transport, The American
Association of State Highway and
Transportation Officials

Officially Adopted by the
American Association of State
Highway and Transportation Officials

December 7, 1964

Revised January 15, 1968

and February 23, 1973

and February 18, 1974

[13]

2.06.05 No other combination of vehicles shall consist of more than two units, except that one truck-tractor semitrailer may haul one complete trailer, and no such combination of vehicles,

including any load thereon, shall have an overall length, inclusive of front and rear bumpers, in excess of 65 feet.

DEPOSITION OF THURMAN D. SHERARD

Filed October 3, 1975

[Caption Omitted in Printing]

DIRECT EXAMINATION

By Mr. DeWitt:

[1]

Q. What is your occupation?

A. Civil engineer.

[2]

Q. Mr. Sherard, are you the individual designated by Western Highway Institute as the person to testify on behalf of the Institute

in connection with this particular case?

[3]

A. Yes.

[9]

A. ...Of course, I have done work in fields of power and traction and stability and offtracking, acceleration, basically the various characteristics that trucks have in operating on the highways, and I think primarily my main assignment has been to investigate the safety and the feasibility of increased sizes and weights.

[10]

Q. I am now showing you Exhibit 2 purporting to be a document known as Research Committee Report No. 5, entitled "Splash and Spray Characteristics of Trucks and Truck Combinations."

* * *

Is this document one which was prepared by the Western Highway Institute, and is it properly designated as Research Committee Report No. 5?

* * *

A. Yes, I supervised the tests made by the Western Highway Institute contained within that report.

Q. What is splash and spray, as referred to in this report?

A. Well, vehicle splash and spray is really two separate but rather interrelated factors. Splash is the large droplets that are thrown outwardly from the tire-pavement contact area by the tire as it hits the surface of the road and is caused mainly by ponding and puddling due to deformations in the highway surface

[11]

or an unusually large amount of water on the highway.

Spray is those larger droplets that are carried around by the tire, by adhesion to the tire surfaces, or splashed by the tire against

the surfaces, various surfaces of the truck, which are atomized, blasted into small particles, and then are carried outwardly by air currents as spray.

There's also some spray that is thrown off, that is splashed, broken into spray by the opposing air currents at a tandem axle, and then thrown outwardly as spray.

Q. Now, in this study which is set forth in Exhibit 2, did you, among other things, compare twin trailers, semitrailers, tank semitrailers, and other vehicles as to their splash and spray characteristics?

A. Yes, we did this at Fort Stockton.

* * *

[12]

Q. Now, does this report state, if you will look at page 85, and I quote, "The configuration rated as creating the least splash and spray was the typical western doubles combination." Do you find that on page 85?

A. Well, let me look here.

Q. Okay.

A. Yes, "The configuration rated as creating the least splash and spray was the typical western doubles combination."

Q. And when you say "western doubles combination," is this just another term for 65-foot twin trailers?

A. Yes.

Q. Now, did you, subsequent to the study we have just been talking about, coordinate and supervise a subsequent test at Madras, M-a-d-r-a-s, Oregon?

A. Yes.

Q. What were your findings from the Madras test?

* * *

[13]

A. Well, the test showed that the twins put out about 20 percent less splash and spray as did the tractor-semi.

It also showed that the tractor-semi, when it was equipped with the best suppression device available, put out as much splash and spray as the twins did without any suppression devices whatsoever.

* * *

Q. Now, have your test findings been verified by other research agencies?

A. Well, at Madras, the National Highway Traffic Safety Administration hired Southwest Research Institute to do some studies on splash and spray, and I think mainly to check the work that we had done.

They asked us if we would allow Southwest Research Institute to come up to Madras and observe, and also take measurements with their own instruments on our tests, which was done, and the report that they issued, that Southwest Research

[14]

Institute issued, verified the findings that we had on the splash and spray effects.

* * *

Q. I now show you what has been marked as Exhibit 3, purporting to be the final report of Southwest Research Institute.

Is this a true copy of the report of that institute on these tests which were run by you at Madras?

A. Yes.

Q. Would you be kind enough to look at page 19?

A. Okay.

Q. Would you refer to paragraph 6 there? Does this report state:

"The special double- and triple-trailer rigs generated about the same amount of spray, which was approximately 20 percent less than the standard bogie vehicle"?

A. Yes.

Q. Now what is meant by a bogie vehicle, and what was the bogie in this instance?

A. Well, a bogie vehicle is a standard by which you compare the performance of other vehicles, and the bogie vehicle in this instance, as in most of our studies, is a tractor-semitrailer, because it is pretty universally known throughout the world, you might say, and it

[15]

travels on about all highways and all weather conditions, and it's a good standard.

Q. This is a semi that we have been talking about, the 55-foot overall length?

A. Yes, this is the 3-S2.

Q. Now, did your observations agree that the twins generated about 20 percent less spray than the bogie semitrailer?

A. Of course, our observations at Madras agreed with the instrument findings pretty well.

At Fort Stockton we had ten observers placed in three different positions along the test track. Each one of these observers rated the pattern width, pattern height, the density of the pattern of each of the configurations that we ran there, and the results of these ten observers, their unanimous opinion was that the twins put out less spray than what the tractor-semitrailers did, and it was noticeably less.

Q. Now, did that take into consideration the fact that the twin would be ten feet longer so that the person passing a vehicle would take somewhat longer to pass that vehicle?

A. Well, what you are involved in on passing is the width of the pattern, so that if you are in the other 12-foot lane, does the spray pattern reach out far enough to cause you trouble, the height of the pattern, is the spray pattern high enough to really hit you in the windshield, and is the pattern dense enough so that you have difficulty in seeing ahead of the vehicle that you are passing?

The patterns of the twins were not as wide or not as high, which meant that the

passing car would be more outside of the affected zone than they would with a semi. It also wasn't as

[16]

high, so that it wouldn't have the effect on your windshield, and it also wasn't as dense, so that you could see through the pattern when you were passing.

There's no doubt that the extra length means that you have a little additional time, say, two-thirds of a second, or around in there, where you are in the zone, but the density is very important on this.

Q. I show you page 14 of Exhibit 2, which is Splash and Spray Characteristics of your WHI Research Committee Report No. 5, which is entitled "Typical Air Flow Patterns for Tractor Truck-Semitrailer Combination."

Would you explain the significance of that diagram?

A. Well, this is a tractor-semi. However, it isn't the same tractor-semi that we are referring to here. This is a single axle--or rather a two-axle tractor pulling a single axle box, so it doesn't have the same effect, as far as splash and spray has, of the semi that we are talking about here, because it doesn't have the tandem axles.

But your aerodynamics, basic aerodynamics, is probably close to the same.

You can see on the diagram that you have a wind current that goes over the top of the tractor and down between the tractor and the box about at the tractor drive axles, and you have another air current that comes in underneath the tractor and gets in there underneath the box.

What happens here is that because of the oscillation of your box up and down, you have a blasting effect which forces this air outwardly at your wheels, so this effect throws the

[17]

spray out from the wheels laterally from the box.

You also have an air current that, as it goes around the side of the box, it has a circular motion there which causes turbulence, and in a rain it would cause some spray.

Also, another current at the rear of the box, as the air falls over the back of the box like a waterfall, and it mixes around and causes a pattern more or less directly behind the vehicle. That's this one.

This applies to this one particular configuration.

Q. Now, with respect to your findings generally, is the spray problem worse at some points of the vehicle than at others?

A. Yes, our tests have all shown that the worst location is at the drive axles of a tandem axle tractor.

* * *

A. What a lot of people see is that the spray is at the rear end of the vehicle.

It originates mainly at the tractor, tractor axles, but because of the velocity of the vehicle, the spray pattern appears to be most dense or most troublesome at the rear. But actually the problem originates mostly at the tractor drive axles where you have opposing air currents between the two tandem axles, and you have this air over the top of the tractor that gets down underneath there, and underneath the tractor, it

[18]

gets there, and this all gets together at that one point, and then it causes an air blast or air turbulence that throws this outward. It is

thrown outward because of the velocity of your vehicle.

* * *

Q. Would those wheels on the twin, at the rear of the first of the two 27-foot trailers, help to squeegee additional water out of the way?

A. Yes, you have this advantage on the twins. You have the fact that your box is generally closer to your tractor, so there's not as much of an air space in there for the air to get down and get underneath, and you also just have a single drive axle which you don't have the opposing air currents that are caused by a tandem axle, and you also have the fact that you have more axle spread over a greater distance to splash that water out of the wheel path, so that by the time you get to your last box in a straight-line condition, your last trailer is traveling on a lot drier surface.

The other advantage is the length of the twins, which is sort of like, well, the air currents are sort of like water, and you notice the water going over waterfalls, you have an

[19]

upstream effect to where your water will sort of flatten out before it gets to the waterfall. You have an upstream effect on air current so that, because of skin friction, this effect, it actually pulls the air currents in tighter to the sides of the vehicle, which accounts for the reason that the width of our spray patterns is less.

Q. Theoretically, even if you had tandem wheels on a double, these other factors you have mentioned should make the spray problem less than a semi with a tandem-wheels driver; is that correct?

* * *

A. That's correct, and the studies at Fort Stockton proved that to be the case.

Q. I wasn't sure about that. You did actually test that out at Fort Stockton?

A. Yes.

Q. What is a principal standard of maneuverability for a motor vehicle?

A. Principal standard?

Q. A principal standard.

A. Offtracking would be probably the major principal standard.

[20]

* * *

Q. Are twins more maneuverable than semis?

A. Well, they are more maneuverable, except in the backup.

Q. Is there much occasion for vehicles to back up on an interstate highway, divided highway?

A. No, not with your eight-foot shoulders, emergency shoulders that are a part of the interstate standard.

Q. What is meant by fishtailing?

A. Well, that's an expression we very seldom use, but it refers to the lateral oscillation or the deviation from a straight line at the rear end of a truck or truck combination.

Q. Is there any significant difference in the tendency to fishtail between semis and twins?

A. Well, the twins have one more point of articulation, but all of our tests have shown that there's very little difference between the way that the rear of the two combinations--both combinations have no problem meeting the federal standards which require that the

[21]

lateral deviation shall not exceed three inches on either side of the wheel path.

Q. What is meant by jackknifing?

A. You have really two types of jackknifing. You have a tractor jackknifing and you have trailer jackknifing. Trailer jackknifing is sometimes referred to as trailer swing. Tractor jackknifing is when the drive axles of the tractor lose their bite on the road or lose their traction and the tractor gets out of position and is overridden by the trailer.

The trailer jackknife, or the trailer swing, is when the tractor maintains its traction, but the wheels of the trailer lose their traction, and they they override the tractor.

Q. Now, with respect to either of these kinds of jackknifing, do twins have a lesser or greater tendency to jackknife than do semis?

A. The studies that we have made and the tests that I have observed show that the twins are less susceptible to jackknifing than semis.

Q. What is meant by dynamic stability and braking stability?

A. Well, dynamic stability is the stability of the vehicle as it travels down the highway under power, yes, under power.

Braking stability is the stability of that vehicle during a braking condition.

Q. How do the dynamic stability of twins and the dynamic stability of semis compare?

A. Well, as I mentioned before, there's very little difference in the two.

Both of them meet all the dynamic stability standards.

* * *

[22]

Q. Why is it; is there a reason why twins have a lesser tendency to jackknife than semis?

A. Well, there's several reasons.

Now we are talking about under what condition?

Q. Well,--

A. Under the braking condition?

Q. Yes, that's when jackknifing most frequently occurs, isn't it, in braking?

A. Yes.

Well, there are several reasons. Probably the most important factor is the lateral distribution of side forces relative to the center of gravity which you have on the twins. You have your tires on the ground rather uniformly spaced over a greater

distance and your center of gravity in relation to this is--well, provides for a more stable condition.

One of the other reasons is that the second trailer acts as rather a stabilizing fin, you might say.

It has a tendency to swing in the opposite direction than the trailer in front swings, and thus it cancels the deviant forces, the vector forces that you get at your tractor and at your second trailer.

The other factor is length, because length is--the longer you have, the more resistance you have to side forces, so the ten-foot additional there would have some effect there.

Q. Now, how does the braking stability of twins and the braking stability of semis compare? Is this essentially what you have just discussed?

A. Yes. I think what I said was that under braking, that twins are more stable than semis.

[23]

This is especially true in the tests we have made and the tests that the National Safety Council has made there at Steven's

Point, that it is even more noticeable on low coefficient surfaces like wet or icy.

* * *

[25]

Q. If the same amount and type of cargo is shipped in a given state, both before and after that state permits the use of twin trailers, will there be an increase or will there be a decrease in truck traffic on the highway if twins are permitted? I am speaking of truck traffic now.

A. Well, twins will--at the same density of freight, where you would cube out and gross out at the same time, twins would have a reduction of about, say, 25 percent in the amount of traffic on the highway.

* * *

[26]

Q. Can either a twin or a semi generally stop at the same distance it takes a passenger car to stop if they are going at the same speed as a passenger car?

A. Not on a dry pavement.

They probably can do it faster on ice or snow pack, but not on dry pavement.

Q. What is the reason for this?

A. Well, it's the amount of energy you have to stop, or force, and the equation for that is mass times velocity squared.

So if you take your passenger car and your truck traveling at the same speed, and your velocity squared is the same, it is

[27]

constant, but you take a car, 6,000 or 8,000 pounds versus a truck, 70,000 pounds, you have a tremendous lot more force to stop, which has to be dissipated through the brake drums or through the tire contact point.

On dry pavement, there's just not any way that I know of, or I don't think anyone knows of, how you can do that, unless you put enough--unless you put enough axles and tires on the vehicle that you could dissipate that heat much more, at a much more rapid rate, and then conceivably, theoretically, you could stop them in the same distance.

* * *

[28]

Q. Are the longer stopping distances of these trucks, both twins and semis, as compared to passenger cars, compensated for in any way?

A. Well, your driver of your truck generally is a professional driver, and his reaction times are quicker. He's trained.

He also is sitting up where he can see farther ahead, so he can see trouble before it occurs, at a greater distance, so I think that there's a compensation there.

Q. Generally, is there more or less of a tendency of trucks to swerve and slide in braking than there is of passenger cars?

A. Well, that is quite a question.

I would say that a passenger car, under what you call panic braking, has some problems in that there is not enough weight on his wheels to get the friction that is necessary, and they will go out of control and spin around; whereas a truck, maybe

[29]

at that same speed, that's got a load on his axles, will get a better bite on the road surface and will be able to stop in a straighter line.

And he also has a larger area on his footprint. But, you know, you can get into a lot of variables there.

* * *

Q. Do you have an opinion as to whether the additional 10 feet in length of a twin over the length of a semi, both operating on a four-lane divided interstate highway, constitutes a safety hazard?

A. I don't think it does.

Q. That is your opinion?

A. That is my opinion, that

[30]

it doesn't. We are talking about an interstate highway?

Q. Right.

A. Four-lane divided highway?

Q. Correct....

* * *

[32]

Q. Are twins easier to load and unload than semis?

A. Yes.

Q. Why is this true?

A. Well, it's purely a matter of the depth of the box.

You got 40 foot of depth. You have to put your load--you have to carry it 40 feet to

the back of the box to start building up your load, and if you unload it, you have to pull out all this other freight to get to the back. It is just a matter of distance.

That 27-foot distance is a lot more convenient and easier to handle than the 40-foot box. Another thing is that twins

[33]

allow the operator to split his load for two destination points and load one cargo in one box and one cargo in the other box. All he has to do is drop off his one trailer at this destination point and maybe pick up another box at that point, and take the other trailer on without any stops.

If he has the two loads in one box, why, then it's a little more inconvenient and harder.

Q. In your opinion will the use of twins have any effect on safety in making pickups and deliveries in the downtown areas?

A. Well, normally I think this is generally the case with twins. The twins don't make downtown deliveries. They are taken into the terminal or the staging area and they are taken for downtown deliveries as a separate unit. So, in other words, you've got a

tractor pulling a 27-foot box, one 27-foot box, so this is a lot less length and it is a more maneuverable vehicle in the downtown area than taking a long 40-foot box down into the downtown area, so it would have definite advantages, as far as safety.

Q. And would it also have advantages as to convenience?

A. Oh, yes.

Q. Both to the truckers and the public in the downtown area?

A. Oh, yes.

Q. Do you have an opinion as to whether or not a loaded twin would be more dangerous than an empty twin in traveling on a four-lane divided interstate highway?

A. Be more dangerous?

* * *

[35]

Q. Do you have an opinion as to whether or not a twin would be more dangerous or increase the safety hazards of driving on a divided interstate highway over driving a 65-foot automobile carrier on the same interstate highway?

A. Yes. There wouldn't be any difference. The twins wouldn't be any more of a hazard than your 65-foot transporter.

Q. Do you have an opinion as to whether or not a twin would be any more dangerous or increase the safety hazard when traveling on an interstate divided highway as compared to an unescorted mobile home traveling [sic] on the same highway, if you assume that that mobile home has a width of 10 feet and an overall length, with the tractor, of 65 feet?

A. Yes, I have an opinion.

Q. What is that opinion?

A. That the mobile home 10 feet wide, 65 feet long, is going to be more dangerous than the twins.

Q. Why is that?

A. Well, ordinarily the mobile home--well, let's take width, for example. You have an eight-foot width on the twins versus a 10-foot width on the mobile home, which means that you have two feet less distance between passing vehicles. You've got, on a 12-foot highway, you've got one foot less on either side with the mobile home. You've

[36]

got two feet left on the side with the twins.

The aerodynamics of the thing, you have more of a frontal area on the ten-foot wide mobile home, which has an effect on stability, unless these mobile homes are carried on a special piece of equipment. I haven't seen any of them that have wheels or brakes or axles that are really specifically designed for highway speeds and that type of operation...

* * *

CROSS EXAMINATION

By Mr. Harriman:

* * *

[38]

Q. That is, you were not testing the performance of splash and spray as experienced in a rainstorm, itself?

A. No, we were isolating, as I said, we were isolating the rain drops hitting the windshield and--

One of the main reasons we did it that way is because when you measure, when you are measuring what the vehicle, itself, produces, if you have the extraneous effect of

rain drops in there, you really don't know what the vehicle is doing, so you can't compare one vehicle against another vehicle, so you are eliminating all outside--these instruments measure the

[39]

water droplets in the air at the point where the driver's eye would be in a passing vehicle, approximately where the driver's eye would be in a passing vehicle.

* * *

[60]

A. ...I think it's relatively--it's a relative safety. If you can stop the truck safely in the same distance that you can stop an automobile that's the most desirable way.

But, practically, if you stop that truck, or if you could stop it in the same distance that an automobile could stop, you probably just--you would create an unsafe condition

[60A]

because of loss of steering control transfer of load, breakdown in your structural integrity, and it would probably be a much more unsafe condition.

* * *

[Jurat]

* * * * *

SHERARD DEPOSITION, Exhibit 2

* * *

SPLASH AND SPRAY CHARACTERISTICS
OF TRUCKS AND TRUCK
COMBINATIONS

Research Committee

Report No. 5

Western Highway Institute

* * *

Comprehensive controlled tests of nine different splash and spray suppression devices and thirteen separate truck configurations were conducted in July of 1972. This is the last test included in this report. It may have provided the clue by which the total problem, rather than just the problem at the rearmost wheels, can be solved.

* * *

[70]

Section 3. Ft. Stockton Test, July, 1972

* * *

[72]

d. Test Equipment

Ten different types of trucks, truck-tractors and semitrailers allowed the evaluation of fifteen different configurations which represent the basic characteristics of a majority of commercial vehicles in daily operations on major highways.

* * *

[91]

Summary and Conclusions

* * *

[92]

(4) Of eleven typical truck and truck combination configurations, the truck tractor-tank body semitrailer was rated as having the most severe splash and spray characteristics. In second and third positions respectively in the most severe category were the autotransporter and the truck tractor-40-foot van semitrailer combination.

The typical 65-foot doubles combinations was rated as creating the least splash and spray.

* * *

SHERARD DEPOSITION, Exhibit 3

Prepared for the Department of Transportation, National Highway Traffic Safety Administration, under Contract No. DOT-HS-5-01040. The opinions, findings, and conclusions expressed in this publication are those of the authors and not necessarily those of the National Highway Traffic Safety Administration.

* * *

[17]

The results of the photometer measurements compare closely with those results obtained with the densitometer. Here again, the PABS device proved to be most effective in reducing spray. To summarize the results of the photometer data, the PABS device reduced spray by 15 percent; the Reddaway device was next at 9 percent, followed by the Roberts device at 5 percent. The Koneta device was last with 2 percent. The triple- and double-trailer vehicles produced the same amount

of spray, which was 20 percent less than the bogie vehicle.

* * *

DEPOSITION OF ARCHIE H. EASTON

Filed August 20, 1975

[Caption Omitted in Printing]

* * *

DIRECT EXAMINATION

By Mr. Axelrod:

* * *

[3]

A. I am Professor at the University of Wisconsin in Madison in the Mechanical Engineering Department, and also a professional engineer operating out of Easton and Associates, which is a consulting engineering firm in accident reconstruction and product liability.

At this time I'm not on the University payroll and I'm not on the Easton and Associates' payroll and I'm not being retained by anyone. I am here as an individual, a professional engineer, as a public servant.

* * *

[4]

Q. What is your particular area of interest as a mechanical engineer and as a professor of engineering?

[5]

A. Basically automotive engineering. I teach in thermodynamics which, of course, is the conversion of heat into power and the reverse cycle, which is refrigeration; and also I teach a course in vehicle testing; and up until two years ago I taught in highway engineering and transportation in the Department of Civil Engineering.

Q. Have you served as a consultant to any governmental bodies with respect to highway safety or automobile accidents?

A. Yes. The National Cooperative Highway Research program and the National Highway Safety Bureau: those are two national.

* * *

[6]

Q. Could you describe both the tractor semi-trailer combination and the 65-foot twin trailer combination in terms of engineering and mechanics?

A. The 55-foot trailer combination is a tractor, which is

[7]

the three-axle vehicle; and the second vehicle of that train is a semi-trailer, which is called S2; so that the public road designation for that is a 3-S2, meaning a three-axle tractor and a two-axle semi-trailer.

* * *

Q. Can you describe the dimensions of the 65-foot twin trailer combination in terms of its component units?

A. Yes; the 3-S2 unit: the unit is 55 feet overall and it consists of a semi-trailer 40 feet long and a three-axle tractor twin in combination, total 55 feet. The gross weight that this vehicle is able to carry legally is 73,000 pounds.

Going now to the 2-S1-2 unit, which is the twin trailer or double-bottom unit, it consists of two or three units actually: a tractor, on which there is a single; and the tractor is a two-axle tractor; followed or connected to a 27-foot long single-axle trailer; to

[8]

which is attached a two-axle pull trailer, 27 feet long: this makes a total length of 65 feet, and it has the legal gross chain weight of 73,000 pounds also.

Q. Now, in addition to the fact that there's a ten-foot difference in length between the semi-trailer combination and the twin-trailer combination, are there any other significant mechanical differences between the two units?

A. Yes.

The difference in the two tractors: a three-axle compared to a two-axle--a three-axle being in the 3-S2 unit; a 55-foot unit. And the tractor in the 65-foot unit is a two-axle trailer. That's a difference in the number of axles.

Then, the first trailer in the double-bottom unit and its tractor is connected by a fifth wheel.

Likewise, the trailer and tractor in the 55-foot unit are connected by a fifth wheel.

In the 65-foot unit there is an additional pivot point between the rear of the first trailer and the full trailer following it.

Those are the basic mechanical differences between the two units.

Q. As a result of your work as an automobile and truck engineer, do you have an opinion as to the overall

[9]

safety in operation between the tractor semi-trailer combination and the 65-foot twin trailer combination?

A. Yes, I do.

Q. What is that opinion?

A. That opinion is that the overall safety of the two units is not significantly different.

Q. What physical aspects of the 65-foot twin trailer combination make it as safe as the 55-foot or semi-trailer combination presently allowed on Wisconsin roads?

* * *

A. First of all, with respect to braking, the twin trailer combination, according to National Safety Council tests, on a straight-away, is able to stop in a shorter distance than the 65-foot [sic] unit. The fact that there are two pivot points on the 65-foot unit and only one in the 55-foot unit make it capable of turning on the shorter radius without going out of the lane of travel. It also makes the unit more

maneuverable from the standpoint of avoiding a potential accident: those are the two items that come to mind at this time.

[10]

Q. Have you authored any engineering studies with respect to the 65-foot twin trailers, Professor Easton?

A. Yes; I have been involved with the National Safety Council Committee on Winter Driving Hazards since 1947; and that committee studied the twin trailer combination 65-feet long: that was in 1968. And I was involved with the writing of the 1968 report.

* * *

[11]

Q. Before we get to table one, I show you at this time a report entitled "Jackknifing of Articulated Vehicles on Slippery Surfaces," authored by you, and dated February 1, 1972; and I ask you if that is, in fact, your report [Handing to witness]?

A. Yes, it is.

* * *

Q. What is the relationship between the 1972 report, which you authored, which was Exhibit No. 3, and the National Safety Council report, which is Exhibit No. 4?

A. The relationship is this: that at that time there were

[12]

a number of agencies asking me the comparative safety between the 55-foot unit and the 65-foot unit; and there had not been any tests directly made--directly comparing these units on ice.

And so, in order to answer these questions, I prepared a paper dated February 1, 1972, projecting or interpolating from the data given in the 1968 report of the National Safety Council; and from this data given in the tables, one, two, three and four, I have offered an opinion as to the relative safety of the 55-foot unit and the 65-foot double-bottom unit.

Q. And what is that opinion as expressed in that report, which is Exhibit No. 3?

A. General conclusion then is that the safety of the 55-foot tractor semi-trailer unit and the 65-foot twin-trailer combination is not significantly different.

* * *

[19]

Q. Turning to another subject, Professor Easton, some people have expressed concern over having to pass a twin-trailer truck on the Interstate Highways; these

[20]

trucks are 10 feet longer than the 55-foot semi units, which are now commonly used.

Approximately how much longer would it take an automobile to pass a 65-foot twin trailer truck as opposed to a 55-foot semi-trailer truck, considering that the car is going 10 miles faster than the twin-trailer vehicle?

A. It would be .68 seconds.

* * *

[21]

Q. In your experience with accidents, and accident reconstruction, what factors are most relevant to the severity of an accident?

A. Speed and mass, weight.

Q. Does the length of a vehicle have any significance to the severity of an accident?

A. No, it does not. The energy possessed by a vehicle of the same weight traveling at the same speed is identical regardless its length.

Q. If, for example, I was traveling in a Volkswagen and I collided with a 65-foot twin-trailer with a gross weight of 50,000 pounds, would I be any worse off than if I hit a 55-foot semi-trailer with the same gross weight of 50,000 pounds?

A. No.

Q. Why not?

[22]

A. Because the energy on both units, which is based on the weight in pounds and the velocity and miles-per-hour squared over a constant would be the same, because, in the question that you posed, the weight you gave as 50,000 in each case, at the same speed, the velocity would be the same; so that the energy of both units would be identical; and it's the energy that causes damage.

* * *

CROSS EXAMINATION

* * *

By Mr. Harriman:

* * *

[41]

Q. The thing that I was going to point out to you was: some of the literature regarding the use of these long trucks indicates that they are loaded--that the long trucks can be loaded up almost to full capacity, at a total of 73,000 pounds, where a 55-footer, which has only a 40-foot trailer, it can't be loaded up to the length of the 65-footer, because you run out of space for the extra freight. Here you have two trucks fully loaded, but which have different weight, and the 55-footer would be lighter; and the lighter truck collision would be, in theory, less severe; at least, in theory, the blow would be a lesser one?

A. We were previously talking about collision with a Volkswagon. Energy-wise, you are absolutely correct. The energy to be dissipated, of course, with the heavier truck is bound to be greater, because the kinetic energy of any vehicle is equal to the weight times the velocity squared over 30, with the velocity in miles-per-hour; so that from any energy standpoint, yes. If you reduce the weight, you reduce the energy.

However, if you look at the collision and we take the Volkswagon; let's take a Cadillac, for example, which it takes a certain amount of energy to crush the Cadillac; and the light truck would still possess more

[42]

than enough energy to demolish the Cadillac, which if you wanted to get into something facetious, I suppose you could say you would be just as dead hit by the lighter truck as you would by the heavier one.

* * *

REDIRECT EXAMINATION

By Mr. Axelrod:

[60]

Q. In terms of jackknifing, I take it that the sum and substance of your answers to Mr. Harriman's questions, in terms of jackknifing, there is no significant difference between the twin-trailer unit and the 55-foot semi-trailer unit?

A. That is basically correct.

Q. And likewise, I take it from your answers to Mr. Harriman's questions with regard to crosswinds, that there would be no significant

difference in terms of crosswinds between the 65-foot twin-trailer and the 55-foot double-bottom?

A. Well--

Q. Of course, my questions assume proper loading.

A. Yes, Yes, if the vehicles were loaded, then--unless the winds were very, very high and the vehicles shouldn't be out on the highway anyhow. So, with a loaded vehicle, it would get--either vehicle would slide sideways, even on ice.

[61]

Under normal wind conditions--it's in any van-type of vehicle--it's the unloaded ones that have the problem.

DEPOSITION OF LEON S. ROBERTSON

Filed October 20, 1975

[Caption Omitted in Printing]

DIRECT EXAMINATION

By Mr. Harriman:

[3]

Q. Will you state your name, please?

A. Leon S. Robertson.

Q. Your business address?

A. Watergate 600, Washington, D.C., 20037.

Q. What is your occupation?

A. I am a senior behavioral scientist for the Insurance Institute for Highway Safety.

Q. Just briefly would you summarize your education?

A. I have a Ph.D. from the University of Tennessee, undergraduate degree from Carson-Newman College, and a post-doctoral fellowship from Johns Hopkins University.

Q. Will you briefly describe your employment and experience?

A. For the past five years I have been in my present position with the Institute; for the prior four years I was on

[4]

the faculty at Harvard Medical School; the year prior to that was the postdoctoral year at Johns Hopkins; for three years prior to that I was assistant professor at Wake Forest University.

- Q. Tell us briefly what is the organization and function of the Insurance Institute for Highway Safety.
- A. The Insurance Institute for Highway Safety is a non-profit research unincorporated association. Our sole mission is to do research and education into the damage to people and property in association with motor vehicles.
- Q. How is that Institute funded?
- A. We are sponsored by the major auto casualty insurance industry through their trade associations and some individual companies.

* * *

[13]

- Q. Directing your attention to page 10 of this study, near the top, third line from the top, there is a sentence that reads, "Generally, the greater the relative difference in size of the vehicles involved, the greater was the ratio of incidence of death in smaller, relative to larger, vehicles." Would you explain that conclusion and how you arrived at it?
- A. We classified the vehicles in terms these are the multiple vehicle crashes, that is, where two or more vehicles crashed into one

another, and looked at the ratio of the deaths in the smaller vehicle to the deaths in the larger vehicle and found that the greater the difference in size of the vehicles the greater was the ratio of death in smaller vehicles to larger vehicles.

- Q. I point out to you the next sentence. It says, "In Fatal crashes between trucks and large cars, death occurred three times as often in the cars as in the trucks." Perhaps that needs no explanation, but do you wish to expound on that?
- A. Well, if you look at those cases in which a truck and a car crashed, the death occurred three times more often in the car than in the truck.

CROSS EXAMINATION

By Mr. Axelrod:

* * *

[22]

- Q. So there is no data in your study to distinguish between truck-semitrailers, which would be one tractor pulling one trailer, and the tractor pulling two trailers, which are

[23]

commonly referred to as twin trailers?

A. That is correct.

* * *

[52]

Q. Would it be your recommendation that trucks--semitrailers be taken off the highways?

A. I don't think that would be a reasonable recommendation in terms of current economics. I might add that I would recommend where it is feasible that they be separated from smaller vehicles. For example, if there are two parallel

[53]

roads running from one point to another point it would be perfectly reasonable to have the trucks run on one road and the cars run on the other.

Q. So, we would have two interstate highways between Minneapolis and Chicago instead of one, for example?

A. Quite often there are roads paralleling interstate highways.

Q. Of course, the problem with your using the parallel roads to the interstate highways is then your accidents would increase because of

intersection problems and pedestrian problems and there are trade-offs, aren't there?

A. I am not sure that is so. I have no data to indicate that the total number of accidents on interstate relative to another road would make any difference.

* * *

[58]

Q. Assuming the problem exists, that the vehicle mix on the highway results in danger to the smaller vehicle, one of your recommendations, I take it, would be engineering improvement to better manage the kinetic energy in the vehicles we do have?

A. Yes.

Q. Accordingly, if doubles managed kinetic energy better than singles, it would be desirable to use doubles, assuming the same weights?

A. If there were something inherent about a double trailer that made it manage energy better than the single trailer, that would be correct, but I know of no

[59]

such attribute.

* * *

Q. ...Dr. Robertson, you indicated to me that you do not have an opinion as to whether twin trailers, or doubles, are safer than semitrailers?

A. In the absence of data to distinguish between the two I have no opinion, no.

* * *

[Jurat]

AFFIDAVIT OF MYRON E. BOTHUN

Filed October 10, 1975

[Caption Omitted in Printing]

* * *

STATE OF NORTH DAKOTA)

) SS.

COUNTY OF BURLEIGH)

MYRON E. BOTHUN, being first duly sworn on oath, according to law, deposes and says:

1. He is the General Counsel for the North Dakota Highway Department and his business address is Capitol Grounds, Bismarck, North Dakota 58505.
2. The State of North Dakota has for many years allowed sixty-five foot double bottom vehicles on its state highways, both two and four lane.
3. From the materials gathered by this agency, there is no indication that sixty-five foot double bottom vehicles have been involved in accidents where their length or configuration has been detected as a contributing factor.
4. The Truck Regulatory Division of the North Dakota Highway Department reports that these trucks have caused no problem on North Dakota highways.
5. The sixty-five foot double bottom truck is in everyday use on North Dakota highways and is an integral part of the overall North Dakota transportation system.

/s/ Myron E. Bothun
MYRON E. BOTHUM

[Jurat]

AFFIDAVIT OF DENNIS EISNACH

Filed October 20, 1975

[Caption Omitted in Printing]

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF HUGHES)

DENNIS EISNACH, being first duly sworn according to law, deposes and says:

1. He is the Superintendent of the Highway Patrol Division, Department of Public Safety, for the State of South Dakota, Public Safety Building, Pierre, South Dakota 57701.
2. The accident experience with 65-foot double bottom trucks on South Dakota highways indicates that these units have not caused any safety hazard.

3. A summary review of our accident record shows no difference in the over-all accident experience with 65-foot doubles as compared with 55-foot tractor semi trailer units.
4. The South Dakota Highway Patrol has not received any motorist complaints related to the twin trailer configuration of these trucks.

/s/ Dennis Eischach

[Jurat]

AFFIDAVIT OF JOE E. SOL

Filed October 10, 1975

[Caption Omitted in Printing]

State of Montana)

County of Lewis & Clark)
) SS.
)

JOE E. SOL, being first duly sworn on oath, deposes and says that:

He is the Chief of the Highway Patrol Bureau for the State of Montana and his business address is 1014 National Avenue, Helena, Montana.

The use of 65 foot double-bottoms by the trucking industry has not caused a problem in the State of Montana and accident experience attributed to this type of unit has not been cause for alarm in Montana since their inauguration in the 1950's.

Montana has not experienced hardship or adverse traffic conditions as a result of the operations of the above-described units on Montana highways.

/s/ Joe R. Sol
 COLONEL JOE R. SOL

[Jurat]

AFFIDAVIT OF COLONEL F.J. WICKAM

Filed October 20, 1975

[Caption Omitted in Printing]

STATE OF WYOMING)
) SS.
 COUNTY OF LARAMIE)

Colonel F.J. Wickam, being first duly sworn on oath, according to law, deposes and says:

1. He is the Director of the Wyoming Highway Patrol and his business address is P.O. Box 1708, Cheyenne, Wyoming 82201;

2. The State of Wyoming has allowed sixty five foot double bottom trucks to operate on Wyoming highways since 1961 and has recently raised the legal length limit for doubles to seventy five feet.

3. Wyoming has practically all types of terrain and highways, consisting of mountains, plains, four and two lane highways, as well as all types of weather, causing dry, wet and snowy roads.

[2]

4. The accident experience with sixty five foot double bottoms in Wyoming is such that we have never kept a separate tabulation of the accidents with these units.

5. It has been our experience as an enforcement agency that the twin trailer configuration, as well as the sixty five foot length, has not caused a traffic or accident frequency problem with our state.

6. The operation of twin trailers has not caused any serious traffic or accident problems.

7. The sixty five foot twin trailer is a commonly used and accepted part of the Wyoming highway transportation system.

/s/ Fred J. Wickam

Colonel F.J. Wickham

[Jurat]

AFFIDAVIT OF RAY LOWER

Filed October 10, 1975

[Caption Omitted in Printing]

STATE OF IDAHO)

)ss.

COUNTY OF ADA)

RAY LOWER, being first duly sworn according to law, deposes and says:

1. He is the Highway Transportation Officer for the Idaho Transportation Department, P.O. Box 7129, Boise, Idaho 83707.
2. The State of Idaho has permitted truck combinations known as 65-foot twin trailers on its highways for approximately 20 years.
3. Effective on July 1, 1974, the maximum length for twin trailers was increased from 65 feet to 75 feet.
4. Although accident statistics in the State of Idaho do not segregate twin trailers from single truck semi-trailers, in the past a manual review of accident reports

was made and revealed that 65-foot twin trailers have a slightly better safety record than single semi trailers.

5. The better safety record of 65-foot twin trailers was attributed to both better equipment and more experienced drivers. The 65-foot twin trailers are typically operated by general commodity carriers who employ more professional drivers, and the double bottom truck itself exhibits better off-tracking than does the semi-trailer unit.

/s/ Ray L. Lower

[Jurat]

* * *

* * * * *

AFFIDAVIT OF CAPTAIN R.E. SHERMAN

Filed October 20, 1975

[Caption Omitted in Printing]

* * *

STATE OF WASHINGTON)

) SS.

COUNTY OF THURSTON)

CAPTAIN R.E. SHERMAN, being first duly sworn on oath, according to law, deposes and says:

1. He is the weight control officer for the Washington State Patrol and his business address is 4242 Martin Way, Olympia, Washington 98504.
2. The State of Washington first allowed 65-foot Twin Trailers in 1955 on a restricted route basis by designating those highways allowed. The designated highway restriction was subsequently amended to allow the operation of doubles on all state highways.
3. The 65-foot Twin Trailer combination is defined under RCW 42.44.037 as a truck tractor, semi-trailer, and a full trailer. The full trailer is the configuration of a dolly or converter gear and a semi-trailer. The allowable length is 65 feet over-all with a height not to exceed 13'6".

4. The Washington State Patrol does not segregate the accident records of Twins from other heavy trucks. Our accident experience with Twin Trailers has been good and therefore no special statistical category has ever been maintained on them.
5. The operation [sic] of Twin Trailers is now an accepted part of the total transportation industry in our state.

/s/ Captain R.E. Sherman

Captain R.E. Sherman

[Jurat]

* * *

AFFIDAVIT OF ROBERT HAMILTON

Filed October 10, 1975

[Caption Omitted in Printing]

* * *

STATE OF OREGON)
) SS.
COUNTY OF MARION)

ROBERT HAMILTON, being first duly sworn on oath, according to law, deposes and says:

1. He is the Permit Director for the Oregon State Highway Department and his business address is 2960 East State St., Salem, Oregon 97310.
2. Sixty-five foot double bottom trucks have been permitted on Oregon highways since 1951. They are currently allowed to traverse 97% of the State highway system, which includes two lane, as well as four lane highways. Sixty-five foot doubles are allowed on all Interstate roadways in Oregon.
3. The use of double bottom trucks has caused no safety problem in Oregon.
4. During his five years as Permit Director, no citizen complaints whatsoever concerning double bottom trucks have been brought to his attention or filed with this office.
5. The double bottom truck is an integral part of truck transportation in Oregon.

/s/ Robert Hamilton

ROBERT HAMILTON

[Jurat]

AFFIDAVIT OF JOHN C. AMTHOR

Filed October 20, 1975

[Caption Omitted in Printing]

STATE OF MICHIGAN)

)ss.

COUNTY OF INGHAM)

JOHN C. AMTHOR, being first duly sworn according to law, deposes and says:

1. He is the commanding officer of the Michigan Safety and Traffic Division of the Michigan Department of State Police, 714 South Harrison Road, East Lansing, Michigan 48823.

2. His duties include responding to requests for accident record information to be

taken from the Michigan Central Accident Records' files.

3. Since 1970, *65-foot twin trailer combinations have been allowed on Michigan Highways, on a designated system consisting primarily of freeways and some two-lane roads to provide [sic] continuity. The 65-foot twin trailer units are not required to have special [sic] permits.

4. The State accident records files do not indicate a safety problem in Michigan with the 65-foot twin trailers.

/s/ John C. Amthor

John C. Amthor

[Jurat]

*65 Foot twin trailer combinations include the tractor

AFFIDAVIT OF ROBERT W. PATTON

Filed October 10, 1975
[Caption Omitted in Printing]

* * *

STATE OF COLORADO)
) SS.
COUNTY OF DENVER)

ROBERT W. PATTON, being first duly sworn
according to law, deposes and says:

1. He is the Staff Maintenance Superintendent of the Colorado Department of Highways, 4201 East Arkansas Avenue, Denver, Colorado 80222, and has held this position since 1971. Prior to that time, he had been District Maintenance Superintendent since 1959.

2. His duties include monitoring all truck operations in Colorado with respect to safety to the motoring public, and issuance of oversize vehicle permits. Prior to 1965 when sixty-five foot twin-trailers were first authorized by statute, he had been involved in the issuance of permits for a limited number of sixty-five foot trailers for the purpose of testing such vehicles, as is more fully described hereafter.

3. From 1965 to 1973, the first Colorado statute authorizing sixty-five foot twin-trailers permitted [sic] sixty-five foot twin-trailer operations only on roads designated by the Colorado Highway Commission.

4. Since 1973, sixty-five foot twin-trailers have been permitted on all State highways in Colorado including mountain highways and passes, and two-lane highways, by virtue of C.R.S. 42-4-403.

5. Prior to the 1965 statute, he had been involved in a special test under a limited number of sixty-five foot twin-trailer permits granted to Ringsby Freight Lines, Inc. for the purpose of testing twin-trailer safety. The test proved sixty-five foot twin-trailers to be safe vehicles, and as a result thereof, the Department of Highways recommended to the Colorado Legislature that the 1965 statute authorizing sixty-five foot twin-trailers, be passed.

6. Since 1965, sixty-five foot twin-trailers have become a way of life on Colorado highways and an integral part of the Colorado transportation system. No difference in terms of safety have been experienced between sixty-five foot twin-trailers and fifty-five foot semi-trailers.

/s/ Robert W. Patton
ROBERT W. PATTON

[Jurat]

AFFIDAVIT OF EARL W. HENNEMAN

Filed October 20, 1975

[Caption Omitted in Printing]

STATE OF WISCONSIN)
) SS.
COUNTY OF EAU CLAIRE)

EARL W. HENNEMAN, first being duly sworn on oath, according to law, deposes and says:

1. He is the director of operations and maintenance for Chippewa Motor Freight, Inc. ("Chippewa"). His business address is Post Office Box 269, Eau Claire, Wisconsin, 54701. Chippewa is a common motor carrier of general commodities, serving both Wisconsin and non-Wisconsin points in interstate commerce.

2. For approximately seven years, Chippewa has operated a motor vehicle combination consisting of a straight truck, dolly, and twenty-seven foot trailer, for an overall length of fifty-five feet ("Chippewa Doubles").

3. He has personally worked with this vehicle combination on a daily basis and aided in its original design.

4. The connecting device between the straight truck and trailing equipment is identical to that commonly used on sixty-five foot Twin Trailer [2]

combinations ("Twin Trailers") between the first and second trailers, i.e., a pintle hook between the straight truck and dolly, and a fifth wheel between the dolly and the twenty-seven foot trailer.

5. Chippewa has had six of these combinations in use on a daily basis, transporting general commodities.

6. Wisconsin law allows this vehicle combination on all roads on which fifty-five foot tractor semi-trailer combinations are allowed.

7. Chippewa has experienced no incidence of failure of the connecting device used on Chippewa Doubles combinations.

8. The Chippewa Doubles combinations have been used as a "stop-gap measure" to provide Chippewa with some means of interchanging equipment with the transcontinental carriers who predominantly use Twin Trailer combinations.

9. The Chippewa Doubles have neither the cubic capacity nor the flexibility of Twin Trailer combinations. These considerations and lack of complete compatibility with Twin Trailer operations of connecting carriers have result in the decision by Chippewa management to discontinue use of Chippewa Doubles. The component parts of the Chippewa Doubles are being dismantled for other use as of this date.

/s/ Earl W. Henneman

Earl W. Henneman

[Jurat]

* * *

PLAINTIFFS' REQUEST FOR ADMISSIONS

Filed October 20, 1975
[Caption Omitted in Printing]

* * *

TO: Albert O. Harriman, Esq.
Assistant Attorney General
State of Wisconsin
121 W. Washington Avenue
Madison, Wisconsin 53703
Attorney for Defendant

PURSUANT TO RULE 36, Federal Rules of Civil Procedure, you are hereby respectfully requested to admit the truth of matters set forth below:

1. Defendants Rice, Huber, Sweda, Young, Volk, or their designated representatives, through the Department of Transportation of the State of Wisconsin ("WDOT"), are authorized by statute and do issue permits for over-length vehicle operations on Wisconsin highways, to-wit:

Mobile Home Annual Permits issued under § HY 30.16, Wis. Adm. Code;

Vehicle Transportation Annual
Permits issued under § HY 30.12,
Wis. Adm. Code;

General Annual Permits issued
under § HY 30.06, Wis. Adm. Code;
and

Single Trip General Permits issued
under § HY 30.03, Wis. Adm. Code.

Defendants or their designated represen-
tatives retain files of such permits,
which files are in the custody of WDOT,
and as of July 1, 1975, included files for
the years 1973, 1974, and 1975.

[2]

2. Commencing on the 16th day of June,
1975, and concluding on or about the 1st
day of September, 1975, Plaintiffs
reviewed such files at offices of WDOT in
Madison, Wisconsin.

[3]

* * *

[T]he data was divided into three
categories according to maximum vehicle
length permissible under the permit, to-
wit: sixty-five feet; over sixty feet but

less than sixty-five feet; and over fifty-
five feet but less than sixty feet.

The tabulated data appears in
Exhibit PA-2, attached hereto and
incorporated herein by reference.

5. Plaintiffs reviewed WDOT files containing
Annual General Permits commencing at
the front of Drawer One of such file and
examining each file thereafter, in order,
as filed. The following information with
respect to each permit was recorded on
printed forms: the maximum permissible
vehicle length authorized; and the effec-
tive and expiration dates of the permit.
The recorded data was divided according
to year, for the years 1973, 1974, and
1975. The recorded data included only
those permits which were effective on
June 1, of the respective year. For each
year the data was divided into five
categories according to the maximum
vehicle length permissible under the
permit, to-wit: eighty-five feet, over
seventy-five feet but less than eighty-
five feet; seventy-five feet; sixty-five
feet but less than seventy-five feet; and
over fifty-five feet but less than sixty-
five feet.

The tabulated data appears in Exhibit PA-3, attached hereto and incorporated herein by reference.

6. Plaintiffs reviewed WDOT files containing single trip General Permits commencing with the first permit issued in each year and continuing thereafter, through each file, to the end. The recorded data included permits issued in the [sic] years 1973, 1974, and 1975. For each year, the data was divided into two categories according to the maximum vehicle length permissible under the permit, to-wit: sixty-five feet and over; and over fifty-five feet but less than sixty-five feet.

The tabulated data appears in Exhibit PA-4 attached hereto and incorporated herein by reference.

* * *

[4]

7. The information appearing on Exhibits PA-1, PA-2, PA-3, and PA-4, reflects the information therein purported to be contained is true and correct to a reasonable degree of certainty.

Dated at Madison, Wisconsin, this 20th day of October, 1975.

DeWitt, McAndrews & Porter, S.C.

By: /s/ John Duncan Varda
 John Duncan Varda
 Attorneys for Plaintiff

[Exhibit PA-1]

MOBILE HOME ANNUAL PERMITS

Issued by the Wisconsin Department of Transportation

§HY 30.16, Wisconsin Administrative Code

Length in Feet	Permits in effect in June 1,				178
	1973	1974	1975	3 Year	
85	1,139	1,723	1,672	4,534	
Over 75, under 85	741	222	189	1,152	
75	82	60	48	190	
Over 65, under 75	6	7	3	16	
Over 55, under 65	<u>1</u>	<u>0</u>	<u>3</u>	<u>4</u>	
	1,969	2,012	1,915	5,896	

[Exhibit PA-2]

VEHICLE TRANSPORTATION ANNUAL PERMITS

Issued by the Wisconsin Department of Transportation

§HY 30.12, Wisconsin Administrative Code

Length in Feet	Permits effective on June 1,				179
	1973	1974	1975	3 Year	
65	3,000	2,633	2,799	8,432	
Over 60, under 65	405	374	256	1,035	
Over 55, under 60	<u>37</u>	<u>36</u>	<u>22</u>	<u>95</u>	
	3,442	3,043	3,077	9,562	

[Exhibit PA-3]

GENERAL ANNUAL PERMITS

Issued by the Wisconsin Department of Transportation
§HY 30.06, Wisconsin Administrative Code

<u>Length in Feet</u>	Permits effective on June 1,				3 Year
	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>212</u>	<u>583</u>
85	173	198			
Over 75, under 85	2	0	0		2
75	6,437	9,106	10,266		25,089
Over 65, under 75	752	761	688		2,201
Over 55, under 65	<u>608</u>	<u>715</u>	<u>1,102</u>		<u>2,425</u>
	7,972	10,780	12,268		31,020

180

[Exhibit PA-4]

SINGLE TRIP GENERAL PERMITS

Issued by Wisconsin Department of Transportation
§HY 30.06, Wisconsin Administrative Code

<u>Length in Feet</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>31 Month Total*</u>
	<u>6,510</u>	<u>6,212</u>	<u>4,040</u>	<u>16,762</u>
65 and over	2,387	2,620	1,778	6,785
Over 55, and under 65	8,897	8,832	5,818	23,547

181

(*First seven months of 1975 only)

DEFENDANTS' RESPONSE TO
PLAINTIFFS' REQUEST FOR ADMISSIONS

Filed November 10, 1975
[Caption Omitted in Printing]

COME NOW the Defendants named herein by
Albert O. Harriman, their attorney, and hereby
respond to Plaintiffs' Request for Admissions, made
pursuant to Rule 36, Federal Rules of Civil
Procedure, and dated herein October 20, 1975, as
follows.

Defendants admit the truth of the matters
contained in Paragraphs 1 through 7 of the said
Plaintiffs' Request for Admissions.

/s/ Albert O. Harriman
Albert O. Harriman
Attorney for Defendant

AFFIDAVIT OF PETER GOVE

Filed November 10, 1975
[Caption Omitted in Printing]

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

PETER GOVE, being first duly sworn,
deposes and says:

1. That he is Executive Director of the
Minnesota Pollution Control Agency.
2. That the Minnesota Pollution Control
Agency has reviewed the environmental
aspects of operating twin trailers on
designated highways throughout the
State of Minnesota.
3. That the Minnesota Pollution Control
Agency supports the use of twin trailer
combinations for the following reasons:
 - (a) The use of twin trailer combinations
rather than 40-foot semi-trailers
reduces the number of power units
on the highways.

- (b) The reduction of the number of power units on the highways brings about fuel savings which is extremely important in this time of the oil crisis.
- (c) The use of twin trailer combinations rather than 40-foot semi-trailers also results in fewer harmful air pollutants being emitted along the highways into the air.
- (d) The use of twin trailer combinations rather than 40-foot semi-trailers reduces noise pollution, inasmuch as by using twin trailer combinations it is possible to have fewer power units on the road.

FURTHER AFFIANT SAITH NOT.

/s/ Peter Gove

PETER GOVE

[Jurat]

DEPOSITION OF WAYNE VOLK

Filed September 18, 1975

[Caption Omitted in Printing]

DIRECT EXAMINATION

By Mr. Varda:

[2]

Q. And by whom are you employed?

A. The Department of Transportation, Division of Highways.

Q. And what is your title?

A. Chief Traffic Engineer.

[3]

Q. What is your business address?

A. 4802 Sheboygan Avenue, Madison.

Q. How long have you been employed by the Department of Transportation?

A. I have been employed by the State of Wisconsin Highway Commission since 1934.

Q. Can you give us a brief history of the positions you have held?

A. Well, I was the Assistant to the Traffic Engineer until 1942, and since that time I have been Chief Traffic Engineer.

Q. All right. What are the responsibilities of the Chief Traffic Engineer?

A. Administration of the traffic sections which are responsible for the design, manufacture, installation, and use of traffic control devices, traffic regulations, accident statistic use, and the issuance of permits for road and vehicles which exceed statutory size and weight limits.

Q. In the latter function are you responsible for the administration of Section 348.25 through 348.27 of the Statutes?

A. Yes.

Q. And are you responsible for the administration of Chapter HY 30 of the Wisconsin Administrative Code?

A. Yes.

Q. And as Chief Traffic Engineer are you the person to whom

[4]

applications for trailer train permits under HY 31.4 of the Code are properly directed?

A. Yes.

* * *

[5]

Q. Now, I am going to show you a portion of the 1975 Statutes. Do you have a copy in front of you? Let's refer to Section -- '73 Statutes. 348.25. Are you familiar with this statutory scheme as set out under the heading Permits?

A. Yes.

Q. Do you work with this section of the Statutes on a day-to-day basis?

A. Yes.

* * *

[6]

Q. Now, under Section 348.25(7) there is a provision for revocation of a permit for good cause plus a provision for giving the permittee a reasonable opportunity for hearing. During your experience have permits been revoked?

A. Yes.

[7]

Q. Have any such hearings as authorized by this Section been held?

- A. Yes.
- Q. Can you characterize the type of causes which the Department would determine appropriate for revocation of a permit?
- A. The substantial violation of the permit such as excessively heavy overload, or operation on a highway over which operation was not permitted, and for other reasons, too.
- Q. Before whom would the hearing be held on revocation?
- A. One or more commissioners.
- Q. And who would bring proceedings to revoke a permit?
- A. It would ordinarily be the Chief Traffic Engineer.
- Q. May a permit be revoked without good cause or some cause?
- A. I would say no.
- Q. The criteria for avoidance of revocation or suspension would be adherence to the conditions set forth in the permit as issued to the permittee?
- A. Yes.
- Q. Mr. Volk, would you agree that in each of the subsections in 348.26 and 348.27 relating to subheading items such as annual permit, industrial interplant permit, trailer train

permits, the Highway Commission is authorized and, "may issue" the permits set forth in those sections, and I underscore the word may issue to indicate this is not a

[8]

mandatory type of provision?

- A. Yes, that word is used in each of those subsections.
- Q. And is it your understanding that these issuances of permits thereunder is not mandatory?
- A. That is my understanding.

* * *

[10]

- Q. These general conditions are set forth in HY 30.1(3)(e) and numbered paragraphs thereunder in the issuance of various, the various permits, are you, from time-to-time, are you empowered to waive, alter, or change any of those conditions

* * *

[11]

- Q. You make reference in this third paragraph [of Exhibit 1] to a concentration of mobile homes and modular building fabrication in the

Marshfield-Stratford-Spencer area. In your capacity as Chief Traffic Engineer would you make an investigation of location of manufacturing and industrial facilities within the State?

A. We would only do that in connection with particular concerns

[12]

or problems which had arisen relating to the issuance of permits.

* * *

[13]

Q. Now, Mr. Volk, I refer to what has been identified as Plaintiff's Exhibit No. 2, which is a set of documents commencing with the letter dated June 19th, 1972, addressed to a Mr. H. E. Halverson, H-a-l-v-e-r-s-o-n, and ask you if

[14]

you recognize that letter and the attached documents as documents from your files?

A. Yes, I do.

Q. And now in reference to the letter of June 19th, would you characterize this as a referral of a complaint about particular mobile home operations to a representative of the mobile home manufacturing industry?

A. Yes, I do.

* * *

[22]

Q. Would you say that the most pertinent factor in your consideration of issuance of mobile home permits is the width of the mobile home, the point that it becomes wider than normal highway traffic?

A. That is certainly the primary consideration, although the Commission has set a limitation on the length for which permits will be issued.

Q. What is that limitation?

A. It is now eighty-five feet.

* * *

[24]

Q. Now, I'd like to direct your attention to Exhibit 7. This memorandum was prepared by you, is that correct?

A. Yes.

* * *

Q. On the third full paragraph of your memorandum in Exhibit 7 you make reference to transportation of Minnesota and Iowa origin

and destination mobile homes on Wisconsin roads, and certain types of practices that might be directed at alleviating the problem which is the subject of the memorandum. Can you describe the type of program you evaluated in that paragraph?

- A. The movements of the mobile homes in question were from points in Minnesota, then into Wisconsin, and either northerly or southerly along highways close to the Minnesota-Wisconsin border, then back again into Minnesota or Iowa so that they were using Wisconsin highways whereas the origin and destination of movement was almost always in the adjoining state or states.

[25]

- Q. Your concern was to get the Minnesota and Iowa origin and destination home on Minnesota and Iowa roads, is that correct?

A. Yes, whenever practicable.

- Q. And you apparently determined to, or commenced an action administratively of declining to issue permits for such movements, is that correct?

A. Yes.

- Q. You subsequently determined to hold the moratorium on declining to issue those permits

until action was taken by the respective states of Minnesota and Iowa which would authorize transportation of these homes on their state highways?

A. Yes.

- Q. What type of concern led you to hold off the pressure, if we can call it pressure, rather than increase the pressure to obtain movement of these vehicles on roads in the respective states?

A. Well, as indicated in the memorandum, Minnesota was considering the possibility of refusing single trip permits for the movement of mobile homes from Wisconsin points into or through the State of Minnesota if we discriminated against movement of mobile homes through Wisconsin when the origin and destination was in Minnesota.

- Q. Now, would this have adversely affected Wisconsin manufacturers of mobile homes?

[26]

A. Yes, it would.

- Q. You were in a position, as you indicated in the memorandum, to escalate the discriminatory practice by refusing to issue permits to Minnesota based transporters of units into Wisconsin. Was your determination to avoid

that escalation a matter of avoiding the adverse impact on the industries involved?

- A. Well, our determination to not refuse permits to Minnesota transporters, including the decision to allow movements in Wisconsin parallel to the border where the origin and destination were not necessarily in Wisconsin largely because it was decided that Minnesota didn't recognize, hadn't recognized, before the meeting that Mr. Weaver attended that the extent of the problem, as we viewed them in Wisconsin, and it was our conclusion that we would attempt to rectify the situation as far as these movements in Wisconsin were concerned. We were also, of course, concerned about the effect of escalating the administrative procedure.

* * *

[31]

- Q. Let's refer to Exhibit 9. If you will acquaint yourself with the first paragraph of that Exhibit, will you agree that you recognize that application by Schlitz was for the purpose of performing certain transportation more economically?

- A. Yes, it was.
- Q. The commodity to be transported by Schlitz was empty beer cans, is that correct?
- A. Yes.
- Q. Would you have regard -- Strike that. Would you regard a load of empty beer cans of itself as a load which might be divided?
- A. Yes.
- Q. Among the reasons you use for your recommendation of grant of this permit on Page 2 of Exhibit 9 is the issuance of permit for the same length of vehicle, sixty-five feet, to the American Motors Corporation, is that correct?
- A. Yes, it is.
- Q. Are you familiar with the permit issued to the American Motors Corporation?
- A. Yes.
- Q. And do these permits authorize movement basically from the City between the City of Kenosha and the City of Milwaukee?
- A. Yes. The movement is in both directions, loaded generally. It's from Milwaukee to Kenosha.

[32]

- Q. And this is a distance of approximately how many miles?

- A. About forty-five miles.
- Q. Would that be traveled over the Interstate Highway system at any point?
- A. Partially, yes.
- Q. Is the Interstate Highway 94 in the corridor between the Illinois State line and Milwaukee regarded as a heavily traveled route?
- A. Yes, it is.
- Q. How long, if you can tell me from memory, have the permits been issued to the American Motors Corporation for vehicles sixty-five feet in length?
- A. I would say more than twenty years.
- Q. Are those issued under annual permits?
- A. They are issued as an industrial interplant permit.
- Q. Okay. I didn't mean to use the specific term annual permit, but the industrial interplant permit which are issued to American Motors are annual permits?
- A. Yes, they are.
- Q. You keep no records of the number of trips which may be operated under those permits?
- A. No, we keep no such records.
- Q. And one permit is issued for each vehicle combination?

- A. It's a single permit on which the vehicle combinations, or
- [33]
- I should say rather the vehicles used in the transportation are listed by identification number.
- Q. There is a specific reason you make reference to for issuance of permits to Schlitz. This is again on Page 2 of Exhibit 9. Is that the Schlitz trailers are light weight and will be able to maintain the same speeds as other traffic on the expressway.
- A. Yes.
- Q. You have made no -- Strike that. At some point, Mr. Volk, you made a determination that transportation movement of sixty-five foot semi-trailer units by Schlitz and American Motors should not be prohibited merely because of the length of the vehicles?
- A. The determination with regard to the American Motors vehicle was really made by the Legislature many years ago, and the determination with regard to the Schlitz vehicle likewise was really made by the Legislature in that Section 348.27(4) authorized the issuance of permits for oversized vehicles.

Q. Now, the last page of Exhibit 9 appears to be a memorandum addressed by you to Representative Joseph Czerwinski. Do you know Mr. Czerwinski to be a representative of the Wisconsin State Legislature?

A. He was at the time the memorandum was addressed to him, yes.

Q. The memorandum makes reference to its being a response to

[34]

a request from Mr. Czerwinski's office. We couldn't find any copy of a written request. Can you recall whether that would have been an oral request?

A. I believe that it was.

Q. Is this type of contact to your office made by a Legislative Representative something which occurs from time-to-time?

A. Yes, it does.

Q. And you have listed here copies of the correspondence which were forwarded to Mr. Czerwinski. Did that include all of the correspondence and memoranda in the file on this subject, if you can recall?

A. I can't recall specifically. I would have to search the files. It covered all of the pertinent correspondence, to the best of my recollection.

Q. Was there any further contact with Mr. Czerwinski's office on the subject?

A. Not to the best of my knowledge.

Q. At the time of the inquiry, the permit sought by Schlitz had not been issued, is that correct?

A. That is correct.

Q. Now, let us refer, so the record stands clear, you did make your recommendation in favor of issuance of the permit to Schlitz prior to the contact from Mr. Czerwinski's office?

A. Yes, I did.

* * *

[36]

Q. Mr. Volk, you have before you what have been marked as Plaintiff's Exhibits 12 through 5. Do you recognize those documents as from your files?

A. Yes.

Q. Do these documents relate to the issuance of a certain or certain interplant permits to the A.O. Smith Corporation of Milwaukee?

A. Yes.

Q. These permits were for movement of certain vehicles which would be through a length of sixty feet and a width of eleven feet, is that correct?

- A. That is correct.
- Q. What would be transported on the vehicles?
- A. Automobile frames.
- Q. And would the load of itself which would be transported by this company under the permit be considered divisible?
- A. The load itself would be divisible, would consist of a number of articles.
- Q. These articles could be transported within the statutory width and length requirements, is that correct?
- A. Yes, I believe they could be.
- Q. The reason for their transportation on oversized and -- Check that -- overlength and overwidth units for the purpose of the economy of the transportation?

[37]

- A. Economy and also, if I recall correctly, to facilitate their handling in the industrial operation conducted in their manufacture.
- Q. Would that be to facilitate loading and unloading?
- A. Yes.

* * *

[39]

- Q. Please refer to Exhibit 18, and can you identify the document contained therein as from your files?
- A. Yes, they are.
- Q. Is this again an application for an overlength permit under 348.27(5)?
- A. Yes, it is.
- Q. And was it your recommendation that the statutory authorization did not authorize issuance of a vehicle transportation annual permit for transportation of used, damaged, or repossessed motor vehicles?
- A. Yes. We concluded that the Statutes did not authorize the issuance of permits for that purpose.
- Q. Is that your present interpretation?
- A. Our present interpretation is that if a vehicle is capable of being operated, and if it is capable, and the intention

[40]

is to repair it and place it back into normal operation, that it comes under the definition of terms of a motor vehicle. However, if it is in such condition that it will not ever be useable as a motor vehicle, then it is not a motor vehicle.

- Q. So under your present interpretation would you issue their permit which is the subject of the material in this Exhibit?
- A. We would issue a permit with the stipulation that it might be used only for the transportation of vehicles as I indicated in my previous answer.
- Q. Was your interpretation of 348.27(5) changed as a result of the application reflected in Exhibit 18?
- A. I don't recall that. I would have to examine our files to make sure.
- Q. Up to that time had this Section been interpreted to apply only to new car sales?
- A. I believe not exclusively to new car sales. It is possible that a few for vehicle transportation permits were issued for the transportation of useable used cars.
- Q. Was the applicant in Exhibit 18, with a Minneapolis, Minnesota address, was that an out-of-state applicant?
- A. Yes.

* * *

[42]

- Q. Now, under section 348.27(2) you would be in a position to authorize the transportation of a

pole length load which would result in an overlength vehicle to persons to whom you would not be authorized to issue a permit to for the same commodity under Section 348.27(5)?

- A. Yes.
- Q. To clarify that example, if I had a pole to transport which would result in overlength vehicles and I were not a pipeline company or a public service corporation, I would apply for a permit to transport that pole under 348.27(2)?
- A. Yes.
- Q. Now, going back to the permit application in Exhibit No. 19, is it not true that for transportation economy sought by the applicant here could be effected inasmuch as the pole could be cut and the cut length loaded in some fashion upon the same vehicle within the statutory length limit?
- A. Although I am not entirely familiar with the proposed operation, it is my understanding that this would have been

[43]

at least difficult because it would have necessitated producing a higher load, and it might not have been possible to transport the

same amount of pulp wood within the statutory height and length and width limitations.

* * *

Q. Referring to Exhibit 20, is this related to an application for an annual permit for industrial interplant operations under 348.27(4)?

A. Yes.

Q. And does the application for certain operations from Pulaski, Wisconsin to the state line with Minnesota, Illinois, and Michigan?

A. Yes.

Q. And are the vehicles of which the permit is sought for the length up to sixty feet and widths up to eleven feet ten inches?

[44]

A. Yes.

Q. Is there any limitation with respect to the number of trips which may be operated by the permitted vehicles?

A. No.

Q. And what is the load to be transported?

A. It is oversized boats.

Q. I didn't mean to cut you off.

A. I perhaps should say manufactured by the applicant.

Q. The applicant is a Wisconsin manufacturer of boats, is that correct?

A. Yes.

Q. The boats to be transported under this permit are loads in excess of the statutory limits of themselves are divisible for transportation within the statutory limits, is that correct?

A. I believe that the boats, at least some of them, may be larger than could be transported within the statutory size limits. As to whether all of the loads covered by this transportation consist of non-divisible or oversize articles, I do not recall, though it is possible it could be determined from other correspondence.

Q. This permit as issued would authorize transportation of loads in which no one article was over width or over length?

A. Yes, the permit would.

[45]

Q. Now, if you will refer to Plaintiff's Exhibit 21. Is that fairly characterized as an application by an Indiana company for transportation of boats which would result in an overlength operation on Wisconsin roads?

A. Yes.

Q. And are the loads or were the loads which this applicant sought to transport of themselves divisible for transportation within the statutory limits?

A. Yes.

Q. ...This application was not made under Section 348.27(4), is that correct?

A. It was not made under any specific section of the Statutes. The applicant merely stated the type of load and the dimensions which he wished to transport and asked if it would be possible to transport it.

Q. If this were an application, it could not be granted under the Section to which you made reference?

A. No, it could not.

Q. If Godfrey Conveyor Company, Inc., the applicant here, were located in Pulaski, Wisconsin, and seeking to transport the same load to the Wisconsin state line, or to points in Wisconsin, would a permit have been issued under 348.27(4)?

[46]

A. That would depend upon whether or not the Godfrey Conveyor Company was eligible. They would possibly be eligible if they were a

manufacturer and manufactured the boats, but there is no evidence in their letter of February 12th that they were manufacturers.

Q. A permit would also be issuable if the applicant were an agent motorcarrier, is that correct?

A. Did you ask the question?

Q. Let me restate it. If the applicant in the example we have referred to were a manufacturer or the agent motorcarrier of a manufacturer, permit would be issuable under 348.27(4)?

A. Yes, it would.

* * *

[47]

Q. Referring first to Exhibit 22, is this document your recommended approval of a trailer-train permit?

A. Yes.

Q. This permit is issued to a Badger Paper Mills, Inc.?

A. Yes.

Q. And to the best of your knowledge, would the permit have been issued from year-to-year beginning in 1968?

- A. Yes.
- Q. Does this permit authorize the movement of three vehicles in combination?
- A. Yes.

* * *

[48]

- Q. Referring to the Administrative Code provisions under HY 30.14, specifically (3) and (a), in what categories under (a) would the Badger Paper Mill trailer-train permit fall?
- A. It does not fall specifically under the category of municipal refuse or waste, of course, for the operation without loads of three vehicles in combination.
- Q. Would this be considered an exception or waiver to the Administrative Code provision as it appears in (3)(a)?
- A. Yes, it would.
- Q. To have a complete record, Mr. Volk, this transportation was of some type to have materials moved in a pollution abatement program by the private industry, is that correct?
- A. That is correct.

- Q. Now --
- A. I would like to amplify that slightly.
- Q. All right.
- A. Not that perhaps my answer to your previous question was not complete inasmuch as although this was from a private operation and transported in privately owned vehicles, it has the character of the same as any other municipal waste

[49]

which is generated by the private individual businesses, companies, and has to be transported to a place of disposal. So I suppose that it could very reasonably be construed as being within the term municipal refuse or waste.

* * *

- Q. Now, is the combination of vehicles under the Badger Paper Mills permit was capable of being separated, is that correct?
- A. Yes.
- Q. And it would have been possible to move each trailer unit separately from Badger Mills location to the dumping location?

A. Yes, it would.

Q. Do you accept and would you have recommended authorization of the Badger Paper Mills permit for this twin-trailer operation -- Excuse me--for this trailer-train operation with the understanding that the reason for the movement of three vehicles in combination was for operating economies?

[50]

A. I believe that that is the general purpose behind all of the operations under the 348.27(6).

* * *

Q. Looking first at Exhibit 26, the first paragraph of this letter makes reference to application for permits to transport three vehicles in combination (double-bottom) [by Stoughton Body, Inc.]. Would you understand the unit to be involved in that requested permit to be a sixty-five foot twin-trailer unit three vehicle combinations of the type for which permits were sought by Raymond Motor Transportation, Inc. and Consolidated Freightways, the Plaintiffs in this action?

A. Yes, for that type of vehicle unit. However, these would be empty.

Q. Right. So as far as the equipment itself was concerned, the equipment would be identical or the same type of equipment?

A. That's my understanding, yes.

* * *

[53]

A. ...[T]hey [Stoughton Body, Inc., Stoughton, Wisconsin] just manufacture trailers.

Q. The combination of three vehicle combination was authorized under this permit could have been, was capable of, being separated, is that correct?

A. So far as I'm aware, yes.

Q. ...Each trailer unit could have physically been pulled separately to the state line either utilizing two power units or utilizing a shuttle power unit to effect the movement from Stoughton to the state line?

A. Yes.

Q. The reason for moving the two trailer body combination as a three vehicle combination was for economic reasons?

- A. Yes, it was.
- Q. So far as this annual permit was concerned there would have been no restrictions on the number of trips under the permit?
- A. No, there wouldn't.
- Q. A portion of this movement appears to be authorized over U.S. Highway 51, is that a two-lane highway?
- A. Yes, it is in the area.
- [54]
- Q. As you read the permit, could the vehicles have been moved via U.S. Highway 51 from Stoughton to the Illinois line?
- A. I believe that the wording of the approval of the permit is such that as to indicate that the intended route was via Highway 51 from Stoughton to Interstate Highway 90, then Interstate 90 to Illinois.

* * *

[55]

- Q. Now, if I had a two vehicle combination which involved a straight truck and a twenty-seven foot trailer dolly attached to the straight truck in the matter described in Raymond's twin-trailer application, provided the two vehicle straight truck trailer combination was

within the fifty-five foot limit, would that means of attachment of the trailer to the straight truck be lawful in Wisconsin?

- A. It is my understanding that it would be lawful, yes.

* * *

[56]

- Q. Now, Mr. Volk, do you recall receiving copies of the correspondence over the signature of Mr. Huber in July of 1972 regarding the denial of request for series of, by a series of, motorcarriers for issuance of twin-trailer permits?

- A. I recall receiving copies of a number of letters which

[57]

Mr. Huber sent of the type which you described. As to the exact year, I'm not certain.

- Q. Just to refresh your recollection I show you several documents for the purpose of refreshing your recollection as to the question I have just asked.

- A. Yes, these are copies of letters, copies of which I have received.

- Q. Now, sir, did you participate in the preparation of those letters?
- A. No, I do not believe I participated directly in the preparation of those actual letters.
- Q. Were you requested to make a recommendation with regard to the issuance of those letters?
- A. There were certainly safety discussions of the matter. I don't remember specifically having been asked to make a formal recommendation.
- Q. Now, in most of the permit applications that we have looked at today and produced examples of as Exhibits in this proceeding, the permit was accompanied in the files by a memorandum of recommendation from you as the Chief Traffic Engineer.
- A. Yes.
- Q. And we found no such record with respect to the permit sought and denied in the letters issued by Mr. Huber in
- [58]
1972. Would that tend to confirm that you did not make any formal recommendation of denial or approval as may be your practice in other permit applications?
- A. Yes, it would certainly tend to confirm that.
- Q. If a safety investigation were conducted to determine whether or not the permit applica-

tion we have just discussed should be granted or denied, would that have been within your administrative province?

A. Yes, it would.

* * *

CROSS EXAMINATION

By Mr. Harriman:

* * *

[62]

- Q. Why do we in the State of Wisconsin issue permits for moving mobile homes on our highways?
- A. Principally because it is a unit load which cannot be divided, and it has been deemed in the public interest to permit its movement to provide a form of housing which is needed.

* * *

FURTHER EXAMINATION

By Mr. Varda:

* * *

[69]

- Q. Now, have you had any investigation made of the feasibility relative to the manufacturing

practices of these companies to determine whether the sections of the modular homes could be constructed in such a way as to be transported within statutory size and weight tolerances?

A. Yes, some consideration has been given to that possibility.

Q. And what determination was made?

A. Well, that it is and would not be practicable to construct

[70]

them in eight foot widths for a number of reasons, but principally a matter of economics of the construction and the transportation.

* * *

Q. ...In the transportation of mobile homes, did the manufacturer of, for example, the fourteen foot wide mobile homes precede the availability of permits to transport those

[71]

homes over Wisconsin roads, or did the manufacturers manufacture commence after the availability of such permits to transport those homes over Wisconsin roads?

A. Well, the manufacture of fourteen foot wide mobile homes did begin in other states before we would issue permits for them as mobile homes to be transported in Wisconsin. I believe that there is a possibility that some Wisconsin manufacturers started some experimentation with them in their Wisconsin factories, but my recollection is that quite a few years ago we and the Commission were directly involved with the industry and with individual manufacturers on this question. They were concerned as to whether they should enter into this competitive business, and consequently inquired as to whether or not permits would be issued by the Commission.

* * *

[Jurat]

VOLK DEPOSITION, Exhibit 1

AD-75

File
DEPARTMENTAL CORRESPONDENCE
Division of Highways
File Copy No. 1195-1
Pl 1

Date: June 6, 1972
To: Robert T. Huber
From: Wayne N. Volk
Chief Traffic Engineer
Subject: Re: Permits for 14 Wide Mobile
Homes on the Interstate
Highway System

The following supplements my memorandum of May 8th to Mr. Hicks on the above subject.

Manufacture of mobile homes and modular building sections wider than 12 feet began about six years ago but did not represent a substantial proportion of total construction of these units for about two years. At the present time about 80 to 90% of the mobile homes and modular building sections being constructed in Wisconsin are 14 feet in width.

There is a concentration of mobile homes and modular building fabrication in the Marshfield-

Stratford-Spencer area. I understand that up to 40% of their production goes to the Minnesota market. Most of these units enter Minnesota at Hudson because Minnesota allows them to use U.S. Highway 12 from the Wisconsin line to the Twin Cities and the Interstate highways elsewhere in the state. The Prescott Bridge (U.S.H. 10) is not wide enough to accommodate these mobile homes, so that U.S. Highway 10 from the Marshfield area westerly is not presently much used for their movement.

The movements from the Marshfield area have largely been northerly to S.T.H. 29, thence westerly to Chippewa Falls and to U.S. 12 at Elkmound. Then the mobile homes were required to take U.S.H. 12 westerly through Menomonie to Hudson. While S.T.H. 29 from Withee westerly to Chippewa Falls was recently constructed and of adequate width to carry these wide loads without too much difficulty, State Trunk Highway 29 from Chippewa Falls westerly to Elkmound is only 20 feet in width. U.S. Highway 12 westerly from Elkmound to Hudson is likewise narrow according to modern standards and west of Menomonie goes through hilly country resulting in many curves, hills and relatively narrow bridges.

The older portions of S.T.H. 29 and U.S.H. 12 have suffered substantial shoulder damage due to the fact that these wide loads often encroach upon the shoulder to let other traffic pass. We have had numerous complaints from motorists whose windshields were cracked or broken by stones thrown up from shoulders by mobile homes. Complaints of this nature, of course, have come from other parts of the state as well.

We also received complaints from citizens, from the County Accident Review Committees, from sheriffs, and from the municipalities of Hudson and Menomonie about the hazards and inconvenience to normal traffic resulting from the movement of these 14-foot wide mobile homes over S.T.H. 29 west of Chippewa Falls and U.S. Highway 12 from Elkmound to Hudson.

About two years ago we found it necessary to allow these wide loads to enter I-94 just east of Hudson where U.S.H. 12 becomes coincident with I.H. 94 because it was very hazardous to take these units through Hudson. Shortly thereafter we began requiring that these mobile homes be escorted through Menomonie because of the hazards and congestion which they were causing there.

Fortunately there have been relatively few accidents involving mobile homes, although a few of them have been sideswiped by other vehicles. There have been only two or three fatal accidents directly attributable to these wide mobile homes. Last summer two 14-foot wide mobile homes going in opposite directions on U.S. Highway 12 in St. Croix County sideswiped. A number of mobile home manufacturers in Minnesota are moving their 14 wides into Wisconsin at Hudson.

The decision to recommend to the Commission that there be a three month trial of the movement of these units on I.H. 94 between Osseo and Hudson was based upon the feeling that while there are some hazards involved in moving such a wide (and sometimes slow moving) load on a high speed, busy freeway, these hazards might be less than moving these same loads over the older conventional highways. Each lane of the Interstate is 12 feet in width and the paved right hand shoulder is 7 feet in width. Therefore, these units should be able to remain entirely in the right hand lane since there are no bridges which would force them to move into the other lane. Twelve-foot wide mobile homes and modular building sections are being moved on the Interstate Highway System and other freeways and we have had no complaints about their movement.

It should be noted that no oversize or overweight load under permit may be moved on the Interstate Highway System on holidays, Saturdays or Sundays during the summer, and that these 14-foot wide units are further restricted since they may not move after 4:00 p.m. on Fridays nor after 12:00 noon on the day preceding any holiday.

WNV:btm

VOLK DEPOSITION, Exhibit 4

File

Division of Highways

File Copy No. 1195

Pl. 4

October 23, 1973

Commissioner W. Pudinski
Department of California
Highway Patrol
P.O. Box 898

Sacramento, California 95804

Dear Commissioner Pudinski:

Your letter of October 10, 1973, addressed to Colonel Lewis V. Versnik, has been forwarded to us for reply inasmuch as we are responsible for the issuance of permits for the movement of oversize mobile homes in Wisconsin.

[2]

In addition to the direct hazard to other vehicles which these mobile homes and modular building sections may cause, they are so wide that the right wheels of the transporting units often get onto the shoulder of the highway and cause a deep rut next to the paved surface. This is not only a maintenance problem but may also result in a condition hazardous to other vehicles which inadvertently get off of the paved surface. Our maintenance forces are quite concerned about the damage to the highway shoulders being done by the right wheels of these mobile home transporters.

We have also received complaints about excessive speed and swaying, fishtailing or weaving of these

* * *

Another factor is that mobile homes must travel slower than other traffic because of their size, and to a certain extent, because of the weight of the load in a relation to the size, braking power, and pulling power of the towing vehicle. This is especially true in the case of mobile homes wider than 12 feet. A minimum speed limit of 45 mph has been established on certain sections of the Interstate Highway System between Madison and Milwaukee, and between Milwaukee and the Illinois state line. Although mobile homes do, at times, travel 45 mph or faster, this speed may be too great to be safe. Mobile homes are more susceptible to swaying and lack of traction than are heavier vehicles, such as over-the-road trucks.

* * *

Ten Year Accident Information					
Year	Mobile Home and Passenger Car	Fatal	Mobile Home and Truck	Fatal	Total
1962	17	1	14	2	31
1963	25	0	11	0	36
1964	47	0	17	0	64
1965	36	0	22	2	58
1966	50	0	18	0	68
1967	(The first year 14-foot wide mobile homes were permitted to be moved on highways.)				
	42	0	20	0	62
1968	53	0	25	1	78
1969	59	0	43	2	102
1970	49	0	47	0	96
1971	67	0	54	1	121
1972	62	3	44	0	106

[4]

The Division of Highways occasionally receives written and verbal complaints about the difficulty experienced in passing mobile homes because of their width and length, and because they often move more slowly than other traffic. Undoubtedly, some of the complaints are about some of the larger "travel" trailer types of mobile homes towed by a passenger car.

We are enclosing a listing of the highways on which an escort vehicle is required for mobile homes and modular building sections over 12 feet wide as well as a map of our state.

For loads exceeding 14-foot widths, permits may be issued but the move would be considered as a building move and the restrictions and total distance allowed would be much more restrictive. Permits have been and will continue to be issued for other types of loads wider than 14 feet, but each request is checked for such things as surface and roadway width, time of the year, average daily traffic volume, and the terrain.

The following summary of permits issued for mobile homes since 1969 will give you an idea of the volume of permitted loads in Wisconsin:

Mobile home annual permits which are limited to a maximum of 12 feet wide:

<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
5,039	5,080	5,220	6,211

Mobile home single-trip permits issued for the same period is as follows:

<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
5,990	12,210	17,692	20,703

In summary, while there is some evidence of concern by motorists about the delay and hazard resulting from the movement of these oversize vehicles on the highways, there is little in the accident record to indicate that they represent a problem.

If there is any further information which we can furnish to you, please do not hesitate to contact us.

Sincerely,
Wayne N. Volk, P.E.
Chief Traffic Engineer

By
Robert R. Weaver
Permits Supervisor

RRW:so

Enc.

cc: Lew. V. Versnik

VOLK DEPOSITION, Exhibit 9

File

Division of Highways

File Copy No. 1195-1

Pl. 9

October 8, 1974

W.J. Buglass
Deputy State Highway Engineer
Room 951 H.F.

Wayne N. Volk
Chief Traffic Engineer

Re: Application for Industrial Interplant Permit
Jos. Schlitz Brewing Company

In May, the Jos. Schlitz Brewing Company asked if an industrial interplant permit would be issued to the Company for the operation of a tractor-semi-trailer unit eight feet in width and 65 feet in overall length for the purpose of moving empty cans from their can production facility in Oak Creek, Wisconsin to the brewery in the central part of Milwaukee. They are having these cans transported in standard trailers so as to stay within the statutory length limit of 55 feet, but they are asking for the permit for the larger trailers to make the transportation more economical.

[2]

The 65-foot tractor-semi-trailers proposed by the Jos. Schlitz Brewing Company would be the same length as the vehicle combinations used by the American Motors Corporation. Also, the Schlitz trailers would be lightweight, and as indicated in Mr. Sanderson's letter, they should be able to maintain the same speeds as other traffic on the Expressway. For these reasons, we recommend that the Commission authorize the drafting of the

industrial interplant permits to allow the Schlitz Company to operate vehicles under these permits on the Expressway System between S.T.H. 100 (Ryan Road) and the nearest practicable exit to the Schlitz brewery north of the central business district.

WNV:sn
Attachment

VOLK DEPOSITION, Exhibit 11

APPROVAL OF ANNUAL PERMIT FOR INDUSTRIAL INTERPLANT OPERATIONS

In accordance with Section 348.27(4), Wisconsin Statutes, an Industrial Interplant Permit is hereby granted to Joseph Schlitz Brewing Company, P.O. Box 614, Milwaukee, Wisconsin 53201, for the operation of two single axle truck-tractors and six 57 1/2 foot semi-trailer vehicle combinations transporting empty cans and lids between the company can producing facilities in Oak Creek and the brewery in Milwaukee.

A maximum weight and dimensions of the vehicle combinations will not exceed statutory size and weight limits with the exception of the length which will not exceed 65 feet.

The approved route is from the can producing facilities located at 7620 S. 10th st. in Oak Creek thence northerly to Rawson Avenue, then west on Rawson Avenue to Interstate Highway 94, then north on Interstate Highway 94 to the Fourth Street exit, then north on Fourth Street to Walnut Street, and then east on Walnut Street to the intersection of Commerce and Walnut Streets and the Joseph Schlitz Brewing Company plant entrance. The routing from the Milwaukee Brewery location to the Oak Creek can producing facilities in Oak Creek will be the reverse of the above.

This permit is subject to all conditions hereon, and attached hereto, and imposed by Section 348.27(4), Wisconsin Statutes, and Sections HY 30.08 and HY 30.09, Wisconsin Administrative Code.

WISCONSIN DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

/s/ Wayne N. Volk
Chief Traffic Engineer

Date Approved: 4/28/75

Permit No: II-10-75

Date Expires: December 31, 1975

VOLK DEPOSITION, Exhibit 20
Departmental Correspondence
File Copy No. 1195-1
Pl. 20

Date: November 7, 1974
To: W.J. Buglass
Deputy State Highway Engineer
From: Robert R. Weaver
Permit Supervisor
Subject: Re Application For Annual Permit For
Industrial Interplant Operations Carver
Boat Corporation, Comm. Appr. 11/12/74
Pulaski, Wisconsin 54162

Attached is a request for renewal of an annual permit for industrial interplant operations for 1975 submitted by the Carver Boat Corporation of

Pulaski, Wisconsin, pursuant to Section 348.27(4), Wisconsin Statutes, for the operation of over-length and over-width vehicles for transporting loads from the manufacturing plant at Pulaski, Wisconsin to the Minnesota State Line to the west, to the Illinois State Line to the south, and to the Michigan State Line to the north.

The highways to be used from the manufacturing plant at Pulaski, Wisconsin, to the Minnesota State Line are: S.T.H. 160 and 29, Chippewa Bypass, U.S.H. 53, S.T.H. 29 and U.S.H. 12. We request authority to grant the use of that portion of I.H. 94 concurrent with U.S.H. 12 to the Minnesota State Line at Hudson.

The highways to be used to the south from the manufacturing plant at Pulaski, Wisconsin to the Illinois State Line are: S.T.H. 32 and 29, U.S.H. 41, S.T.H. 100 and U.S.H. 45.

The highways to be used to the north from the manufacturing plant at Pulaski, Wisconsin to the Michigan State Line are: S.T.H. 32 and 22, and U.S.H. 41.

The maximum dimensions of the vehicles and load will not exceed statutory size and/or weight limits except for the length of 60 feet and width of 11 feet, 10 inches.

Listed below are the makes, number of axles, and vehicle identification number of each vehicle for which an industrial interplant permit is requested:

[Serial numbers for six tractors, and eight trailers are omitted.]

Written permission has been received from the following villages and cities authorizing the Carver Boat Corporation to operate on their street systems: Village of Pulaski, City of Greenfield, Wauwatosa, Milwaukee, Hales Corner, West Allis, Marinette, Oak Creek, Shawano and Franklin.

It is recommended that the industrial interplant permit be granted.

RRW:jtm

VOLK DEPOSITION, Exhibit 21
GODFREY Letterhead

File
Division of Highways

Feb. 12, 1973

Wis. Dept. of Transportation
Div. of Motor Vehicles
Madison, Wis. 53702

Gentlemen:

We occasionally find it necessary to transport loads of boats with an overall length of 60-65'. The width in all cases will not exceed 8 Ft.

All length over 55' would be overhand on the front or rear of our truck-trailer combination. Our tractor-trailer rigs are 54' long.

What is the ruling on this type of a load moving on the highways within your state?

Very truly yours,
THE GODFREY CONVEYOR CO., INC.
W.H. Swanson
Traffic Mgr.

RJD/mko

VOLK DEPOSITION, Exhibit 21

File

Division of Highways

File Copy No. 1190

Pl. 21

February 27, 1973

The Godfrey Conveyor Company, Inc.

P.O. Box 1088

Elkhart, Indiana 46514

Attn: Mr. W.H. Swanson

Traffic Manager

Gentlemen: Your letter of February 12, 1973, addressed to the Division of Motor Vehicles has been forwarded to this office inasmuch as we are responsible for the issuance of permits for nondivisible oversize loads.

Inasmuch as your vehicles with a load of boats having an overall length of from 60-65 feet exceed the maximum length authorized in Wisconsin of 55 feet, this could not be approved inasmuch as

you are transporting more than one boat on the load.

In conclusion, therefore, it will be necessary when transporting a load of boats that you restrict your overall length of the vehicle combination to no more than 55 feet.

Sincerely, Wayne N. Volk, P.E.

Chief Traffic Engineer

By

Robert R. Weaver

Permit Supervisor

RRW:so

DEPOSITION OF ROBERT T. HUBER

\ Filed September 18, 1975

[Caption Omitted in Printing]

DIRECT EXAMINATION

By Mr. Varda:

* * *

[3]

Q. By whom are you employed?

[4]

A. The State of Wisconsin, the State Highway Commission.

Q. What is your precise title at this time?

A. Chairman of the State Highway Commission.

Q. What is your business address?

A. 951 is the room number, Hill Farms State Office Building.

Q. How long have you held your present position?

A. Since December 13, 1971.

Q. And what type of employment did you engage in prior to that time?

A. Twenty-three years worth of Legislature and an equal amount of time at the Joseph Schlitz Brewing Company.

* * *

[6]

Q. Does the Highway Commission approve all permits issued under 348.25 and the subsequent sections?

A. We don't specifically. Mr. Volk handles that as part of his assignment.

Q. Is Mr. Volk responsible for making a recommendation as to the issuance of particular permits or types of permits to the Highway Commission?

A. Yes.

Q. Is he relied upon for his recommendations of denial or grant of permits?

A. Yes.

Q. Does the Highway Commission regularly utilize other staff sources for making determinations on the issuance of permits; or is that directly the responsibility of Mr. Volk's division?

A. In some cases Mr. Volk and our State Highway engineer, Mr. Fiedler, and assorted staff people would be involved. But basically the recommendations usually come from Mr. Volk.

* * *

[7]

Q. From the face of this approval [Volk Exhibit 23, Badger Paper Permit] would you agree that it authorizes a movement of three vehicles in combination under 348.27(6) and Hy 30.14 of the Administrative Code relating to trailer permits?

A. Because of a specific problem it appears that it does.

Q. Mr. Volk testified yesterday that this combination was capable of being separated and each trailer unit could

[8]

have been moved separately over the authorized route. Would you agree with that testimony?

A. I'm not totally familiar with it. The case is in 1972, I don't recognize it as something very clear in my mind at this time.

Q. You would not deem this permit to have been inappropriately issued, given the testimony of Mr. Volk that the vehicles could have been separated and moved independently to the destination?

A. That's right.

Q. Mr. Volk testified that the reason for the movement of the three vehicles in combination was for operating economy. Can you agree that this would be an appropriate reason for issuance of the permit?

A. Well, I would not think it would be a general rule for the Commission to give support to those kinds of activities. In each of these cases it would be considered separately, the circumstances surrounding it.

Q. You would not deem it inappropriate for this permit to have been issued for that reason?

A. In this case?

Q. So the question is clear on the record, I was referring to this particular case. You would not deem it inappropriate for it to be issued for reason of operating

[9]

economy?

A. That's right.

Q. I show you a similar form which is part of Exhibit 26 in Mr. Volk's testimony and ask you if you would familiarize yourself with that.

(The witness is examining the document.)

A. This is a transportation of new vehicles, I believe.

Q. Does the permit reflected in Exhibit 26 from Mr. Volk's testimony duly authorize the movement of three vehicles in combination under 348.27 and Hy 30.06 of the Administrative Code?

A. For the purposes of transporting the new equipment to a usable state, yes, it does.

Q. And to your knowledge, sir, does the face of the permit authorize use of Highway 51 south from Stoughton to its intersection with Interstate 90?

A. Yes.

Q. Is that a two-lane road?

A. Yes.

Q. As this type of permit is drafted would it authorize an unlimited number of trips or vehicle miles over the authorized route during the term for which this permit is granted?

[10]

A. Because it says general permit I think that any and all of that new equipment could use that route.

* * *

[11]

Q. The Commission has established by rule certain reasonable conditions and reasonable rules for the issuance

[12]

of permits under that section of the statutes?

A. Yes.

Q. If an applicant complies with the rules and conditions which have been established would the Commission through Mr. Volk generally grant the permit to the applicant?

A. The Commission would still decide on the basis of the individual cases, individual requests.

Q. You do not review each individual request but leave that to the discretion of Mr. Volk, is that right?

A. That's correct.

Q. Now, to the extent again, with respect to Exhibit 26, if Mr. Volk testified that the reason for moving the two trailers in the 65-foot vehicle combination to the State line for economic reason, you would not deem his reason for approval of the permit inappropriate?

A. That's right.

* * *

[14]

Q. So if the Highway Commission for some reason determined that 65-foot auto carriers were a hazard on the highway, unsafe to other traffic, the Commission could withhold granting of any permits under that section?

A. I would think there are additional sections which allow us and give us responsibility to make sure it is safe equipment.

* * *

[20]

Q. ...Are you familiar with the issuance of the Industrial Interplant Permit to the American Motors Corporation of Kenosha?

A. Generally speaking.

Q. Just to clarify this in your mind, and subject to your check, the permit we have just referred to authorized the use of some 22 tractors and a number of trailers in combination of two vehicles over specified routes. The total length being some 71 feet, 4 inches. Is that correct from your observations?

A. That's correct.

Q. And directing your attention to the permit which at its

[21]

foot -- which is part of Exhibit 3, and at its foot is indicated as, "Industrial Interplant Permit II-6-75." I ask if you would familiarize yourself with that document or confirm that it authorized the movement of some 32 tractor-semitrailer combinations over certain highways in Racine, Kenosha and Milwaukee Counties, which amount to a total length on each unit of some 64 feet?

A. That's correct.

Q. Now, still making reference to these permit approvals, would you agree that the loads which are authorized to be transported in each case are loads which could be divided for transportation within separate vehicles within the statutory limits?

A. I would say so, yes.

Q. And would you agree that the permits would authorize an unlimited number of trips or vehicle miles or as many as desired by the permittee under the terms of the permit, during the term of the permit?

A. I don't know whether it is a limitless situation. I think the Commission again makes a decision how many shall be involved.

Q. The Commission made a decision on how many vehicles will be given permits, but those permits do not restrict --

A. The number of trips, you mean?

[22]

Q. Yes.

A. That's correct.

Q. Of this type of vehicle over the Interstate Highway.

Could this type of vehicle move over the Interstate Highways on which it is authorized at speeds equivalent to other traffic?

- A. I'm not sure. I believe it would be the case.
- Q. Is there now a uniform rule of 55 miles an hour on State trunk highways in Wisconsin for both trucks and automobiles?
- A. We have uniform speed limits, yes.
- Q. Would you consider American Motors an important employer in Wisconsin?
- A. I would have to say that without equivocation.
- Q. Would the General Motors Assembly Plant in Janesville be an important employer in that part of Wisconsin?
- A. Yes, it would.

* * *

[24]

- Q. In denying the permits sought by the plaintiffs in this proceeding, Raymond Motor Transportation and Consolidated Freightways, did Mr. Volk seek the advice of the Highway Commission or approval or direction from the Highway Commission?
- A. Yes. Those circumstances were brought to our attention. The Commission made the decision.
- Q. Did Mr. Volk make a report? I ask this because we could not find any written reports. Did Mr. Volk make a written report to the Highway Commission?

- A. I don't recall.
- Q. How would he have made the Commission aware of the pendency of the permit application?
- [25]
- A. We had substantial conversations on the subject of the requested permits not only from these organizations but the general subject.
- Q. Did he cite or produce or reference any of the resources that we just identified, of resources which might be used to guide the Highway Commission in making a determination to grant or deny these permits?
- A. They may well have been part of the discussion but I don't recall the specifics of it.
- Q. Do you recall receiving a series of requests for issuance of trailer train permits of the type sought by Raymond and CF, 65-foot double bottoms, from different trucking companies in about July of 1972?
- A. Yes, I do.
- Q. Would you agree with Mr. Volk's testimony that no formal safety recommendation was sought or given at that time when those permit requests were denied?
- A. It was a Commission decision with specific recommendations from the Traffic Department.

Q. So you would agree with Mr. Volk's testimony?

A. That's correct.

* * *

[30]

FURTHER EXAMINATION

By Mr. Varda:

Q. Mr. Huber, would you agree that the Highway Commission now has authority in the Statutes and in the divisions in the Administrative Code to issue permits for the movement of three vehicles in combination?

A. I believe that's correct.

Q. And do the vehicles for which the plaintiffs in this proceeding sought permits fall within the type of vehicle described in Section 348.27(6) of the Statutes?

A. I'm not sure, but I would expect that there is some authority there.

[31]

Q. The vehicle, the physical type of equipment barring other considerations, the type of equipment that was sought to be permitted is the same type of equipment described in this statutory section?

A. I thought your question was as to whether that was the only factor that guided us.

Q. My question relates solely to the type of equipment that Raymond Motor Transportation and Consolidated Freight sought permits for. That equipment is covered by this statutory section?

A. Correct.

Q. In fact, there are other sections under which the Commission has granted at least one permit for the operation of this type of equipment inasmuch as the Commission authorized Stoughton Body, Inc., as reflected in Exhibit 26 to Mr. Volk's testimony, to move 65-foot twin trailer equipment. Is that a fair statement?

A. Yes.

Q. Does that make the reference clear; was the permit issued under 348.27(3)?

A. Yes.

* * *

[32]

Q. Is it your testimony, Mr. Huber, that the Highway Commission has somehow taken into account and relied upon analyses of public opinion in determining to deny the plaintiffs' permit applications?

A. Our position is as a result of the legislative actions which are deemed by this Commission to be legislative

[33]

directions.

* * *

[35]

Q. Well, is it a fair statement of your testimony that in denying the plaintiffs' permit the Highway Commission took into account factors other than merely those which the Highway Commission might deem necessary for the safety of travel and the protection of the highways?

A. I think I answered that before by saying that legislative direction is one of the major factors in our decision.

Q. The Highway Commission itself would not have determined that granting of the permits posed any danger whatsoever to the safety of travel?

A. I'm not prepared to make a statement relative to the safety of these vehicles. I don't think I would comment on it at this time.

[36]

Q. Well, the Commission --

A. We have only had limited use because of the permit situation such as you described it, and I'm not really in a position to say that we have gone into depth to determine the safety of these vehicles if they would be made legal.

Q. When you say "made legal," you mean authorized in some other way than by permits?

A. By the Legislature.

Q. Currently the Statutes would authorize the issuance of permits for these vehicles if you deemed it appropriate to issue them?

A. That's right.

* * *

[37]

FURTHER EXAMINATION

By Mr. Harriman:

Q. In answer to the questions as to how the Commission feels or what reasons they had, you are speaking for all the members of the Commission?

A. Correct.

* * *

[39]

[Jurat]

* * *

* * * * *

DEPOSITION OF ROBERT R. WEAVER
 Filed September 18, 1975
 [Caption Omitted in Printing]

* * *

[2]

DIRECT EXAMINATION

By Mr. Varda:

Q. By whom are you employed?

A. The Wisconsin Department of Transportation,
Division of Highways.

* * *

[3]

Q. And what is your title?

A. Permit Supervisor.

Q. And how long have you been so employed?

A. Since April, 1967.

* * *

Q. And were you trained in that position by Mr. Volk?

A. Yes, by Mr. Volk and my predecessor who was retiring.

Q. And are you familiar with the permit section of the Statutes under 348.25 through .27 and Chapter 30 of the Wisconsin Administrative Code?

A. Yes.

* * *

Q. Do you work with those Statute provisions and Code provisions on a day-to-day basis?

A. Yes.

[4]

Q. You have before you a form which has been marked Exhibit 2.

[5]

Can you identify that for the record?

A. Yes. It's the annual permit application to transport large and/or heavy articles.

Q. And is that utilized in connection with permits issued under 348.27(2)?

A. Yes.

Q. That permit form has no space and does not require information relative to the number of trips or actual operation to be conducted under the permit?

A. That's correct.

Q. And there is no indication of the required route on that form, is that correct?

A. That is correct.

Q. Do you have limitations on road utilization for vehicles operating under or on permits issued on Exhibit 2?

THE WITNESS: Could we go off the record a moment?

(Off the record discussion)

Q. Do you have some roads that are which you restrict operations of this type of permit?

A. No.

Q. Do vehicles operating under permits such as Exhibit 2 operate on two-lane roads in Wisconsin?

A. Yes.

[6]

(Plaintiff's Exhibit No. 3, Application, marked for identification)

Q. You have before you a copy of a form which has been marked as Exhibit 3. Can you identify that for the record?

A. Yes. It is a vehicle transportation permit application.

Q. And is this form utilized in connection with permits issued under 348.27(5)?

A. Yes.

(Plaintiff's Exhibit No. 4, Application, marked for identification)

Q. Do vehicles operating under permits exemplified by Exhibit 3 operate on all roads in Wisconsin?

A. Class A highways.

Q. Is there a restriction against operation of such vehicles on the expressway system in Milwaukee?

A. I'd have to refer to it just a moment. They are not valid for operation on any part of the expressway.

Q. Do such vehicles operate on two-lane highways throughout Wisconsin?

A. Yes, Class A highways, yes.

Q. Can you identify what has been marked as Exhibit 4?

A. Yes. This is an annual state-wide permit application to transport oversize mobile homes and modular building sections?

Q. And I have set the application form utilized in connection

[7]

with permits issued under Section 348.27(7) of the Statutes.

A. Yes.

Q. Does the Department maintain a tabulation of the total permits issued annually in the category reflected by Exhibit 4?

A. Yes.

Q. Is that record maintained with respect to various lengths of vehicles?

A. No.

Q. Is that information considered not pertinent to the administration of the Section of the Statutes?

A. Well, in answer to your question there is a maximum length limit and width limit that is authorized under this particular type of a permit.

* * *

[9]

Q. What was the purpose of the memo that has been identified as Exhibit 5?

A. As I recall, Mr. Landsness, the Chief Maintenance Engineer, was going to deliver a

dissertation to someone, but I really don't know who, and he was asking for information relative to permit movement and oversize vehicles and loads.

* * *

[10]

Q. ...Were you responsible for the Department correspondence indicating the unavailability of a permit for the Godfrey Conveyor Company of Elkhart, Indiana, to transport loads of boats in excess of fifty-five foot length limits in Wisconsin?

A. Yes.

Q. And did you hear Mr. Volk's testimony to the effect that such a permit could have been issued to the Godfrey Conveyor Company, Inc. if it were a manufacturer located at a Wisconsin point transporting such divisible loads of boats overlengths to the Wisconsin State line or to a point in Wisconsin?

A. Yes, if it were within the terms of the Industrial Interplant Permit under 348.27(4).

Q. If the manufacturer of boats in a Wisconsin point sought the very same authorization as sought by the Indiana firm, would the permit be granted?

A. In other words the Indiana firm actually had his business, the manufacturer of boats, in Wisconsin, correct?

Q. Right.

A. Yes.

Q. The permit would then issue?

A. That's right.

Q. To that extent this would be an exception to the statement

[11]

contained in Exhibit 5 with respect to the effect of the policy as between Wisconsin and non-Wisconsin residents?

A. Um-hum.

Q. Yes?

A. Yes.

[14]

Q. Now, in the next paragraph [of Exhibit 5] you state that many Wisconsin industries depend upon their ability to secure permits for oversize and overweight loads, and you use several specific examples when you refer to American Motors and General Motors vehicle assembly in Wisconsin. You are referring, are you not, to loads which could be divided except for economic reasons?

A. Well, I would think that it was an [sic] is the intent of the Legislation, Governor, and the Highway Commission and news media, for instance, letters, and so forth, that we would -- Let's see. How do I want to put it? To pass legislation allowing the movement of, for instance, enabling legislation to move under an industrial interplant permit as with, for example, automobile bodies, car bodies, this type of thing.

Q. Let me get the specific question. Now you are making reference in this memorandum to Wisconsin industries, and their dependence upon ability to secure these permits, and you then make reference to American Motors and General Motors. As an example, American Motors has a manufacturing facility

[15]

located at Kenosha and Milwaukee, is that correct?

A. Yes.

Q. And General Motors has an assembly plant located at Janesville?

A. Correct.

Q. Now, the loads that would be transported under permit are loads which of themselves, auto bodies, for example, could be divided for

movement on vehicles within the statutory length and width requirements?

A. Sure. *L*

Q. Now, it's for economic reasons, as you recognized in this last sentence in this paragraph, that permits are issued for overlength vehicles transporting such items?

A. Yeah, where I make reference to the vehicles transportation permit allowing a load in excess of the fifty-five foot limit.

Q. When you say they could not, could American Motors and General Motors vehicles assembled in Wisconsin could not be economically moved, you are citing could not be economically moved as the reason for issuance of permits for loads which would otherwise, which could otherwise, of themselves be divided into separate units within the statutory limits?

A. The only thing that I could say is that under the authority mandated by the Legislature that permits may be issued for

[16]

vehicles transportation permits under 348.27(5).

Q. Are you familiar with the issuance of permits to A.O. Smith and Schlitz Brewing Company, are you not?

A. Um-hum.

Q. Now, those permits are issued for the same reason?

A. It's my understanding, yes.

Q. And the permits issued to Stoughton Auto Body, Inc. for transportation of sixty-five foot double bottom units from Stoughton to the State line is for the same reason?

A. Yes, that is my understanding, yes.

* * *

[Jurat]

WEAVER DEPOSITION; Exhibit 5

File

Departmental Correspondence

Division of Highways

File Copy No. 1190

Pl J

Date: November 15, 1973

To: G. T. Landsness

Chief Maintenance Engineer
 From: Robert R. Weaver
 Permits Supervisor
 Subject: Re: Information on Permits for
 Oversize and/or Overweight Loads

Per your request for a brief description regarding the issuance of permits for the movement of oversize and overweight loads on public highways.

Sections 348.25-348.28 inclusive, Wisconsin Statutes, authorizes the issuance of permits for vehicles and loads exceeding statutory size and weight limitations, and give guidance as to the form, content and conditions of permits, the types of permits which may be issued and the officer or agency authorized to issue permits. A primary consideration in the case of most permits is that they "shall be issued only for the transporting of single article or vehicle which exceeds statutory size, weight or load limitations and which cannot reasonably be divided or reduced to comply with" those limitations.

The types of permits mentioned in the statutes include:

- Single-trip Permits
- Industrial Interplant Permits
- Mobile Home Annual Permits
- Pole and Pipe Transportation Permits
- Mobile Home Single-trip Permits
- Vehicle Transportation Permits
- Annual Permits
- Annual Trailer-Train Permits
- General Permits

Single-trip permits (including single-trip mobile home permits) and annual permits (including annual mobile home permits) represent the great bulk of permits issued. The State Highway Commission may issue all of the above types of permits, and the local authorities with respect to highways under their jurisdiction may issue single-trip, trailer-train and general permits. During 1972 the central office of the Division of Highways issued approximately 38,000 single-trip permits, 24,000 annual permits and 3,200 vehicle transportation permits. Fewer than 550 permits of all other types were issued in 1972.

Attached is a copy of the Wisconsin Administrative Code, Chapter Hy 30, covering the rules of the Commission for the issuance of permits as

authorized by Section 348.25, 348.26, and 348.27, Wisconsin Statutes as well as the most recent change of Hy 30 approved by the Commission November 12, 1973 which as yet has not been published by the Revisor of Statutes which, however, we expect to have in effect in the early months of 1974. Applications may be made in writing or by wire communications transmission, but are not accepted via telephone. Permits are issued on the basis of policies established by the statutes and by the Commission without regard to whether the applicant is a resident of Wisconsin or not. Insurance coverage to reimburse the public for personal injury or damage to property resulting from movement under a permit is required, the amounts being dependent upon the size and weight of the load.

Most single-trip permits and all annual permits are issued by the Permit Unit of the Traffic Section of the Bureau of Engineering, Division of Highways. No charge is made for any permit, but the permittee is required to pay the cost of issuance of permits by wire communication systems. The cost of issuing permits during calendar 1972 is estimated to be approximately \$75,000 for salaries and material alone.

Each permit specifies the maximum size and weight of the combination of vehicle and load which may be operated under the permit. The weight limitations are determined by calculations of the ability of various highway surfaces and bridge structures to carry a limited number of loads of specified magnitudes and distributions. The limitations on size are determined by considerations for the safety and reasonable mobility of other traffic using the highway as well as the special requirements for the object to be transported or the industry involved in the transportation. Presently the normal maximum limitation on size of vehicle and load for the various permit types are as follows:

<u>Permit Type</u>	<u>Length- Single Vehicle</u>	<u>(Vehicle and Load) Vehicle Combination</u>	<u>Overall Width</u>	<u>Overall Height</u>
Single Trip	50 Feet	75 Feet	16 Feet	20 Feet
Annual	50 Feet	75 Feet	12 Feet	16 Feet
Pole and Pipe				
Transportation Vehicle	50 Feet	100 Feet	Statutory	Statutory
Transportation				
Trailer-Train	--	65 Feet	Statutory	Statutory
Mobile Home	--	100 Feet	Statutory	Statutory
Annual	--	85 Feet	12 Feet	Statutory
Mobile Train				
(Single-Trip or Annual)	60 Feet	--	--	--

Weight limitations of single-trip and annual permits.

As follows except as these weights may be reduced because of axle spacing less than the maximum as described in Paragraph (c):

* * *

Single-trip permits, on the other hand, being issued for a specific trip, details the route which may be followed as well as the size and weight limitations. Since they generally apply to larger and heavier loads, special limitations as to hours of operation, escort requirements, etc. are often placed upon single-trip permits.

The lower size and weight limitations on annual permits are based upon the fact that there is relatively little surveillance of operations under these permits once the permit has been issued. Therefore, the size and weight of the load which may be moved under an annual permit should be restricted to the maximum which can reasonably be transported on most of the highways of the state.

Since single-trip permits issued by the Division of Highways are valid only on the State Trunk Highway System, and since each application must detail the size, weight and character of the load as well as the route proposed to be used, the maximum dimensions and weight which the Commission will authorize under a single-trip permit are considerably greater than under an annual permit. Although the above table does not so indicate, single-trip permits are issued for the transportation of buildings, with proper escort and detours where necessary, up to 30 or 35 feet in width. However, in such cases, the mover must make proper provisions for a fully marked detour which will adequately handle traffic during the period that the road is closed to traffic. Furthermore, the Commission has placed limitations upon the distance which a load may be transported if it is of such a size as to occupy a substantial portion of the roadway width.

Permits for mobile homes and modular building sections over 12 feet in width (and all other types of loads under permit) are not valid on any portion of the Interstate Highway System (except for sections between Tomah, Wisconsin and the Minnesota State line at La Crosse [I.H. 90], and

the Minnesota State Line at Hudson [I.H. 94] where we do authorize 14-foot wide mobile homes and modular building sections to travel). Due to the volume of traffic from Tomah east to the Minnesota Line at La Crosse and Hudson, it was felt we could open this portion of the Interstate System to 14-foot wide mobile home units. We believe that their size and speed make them an unusual hazard on freeways where drivers are not expecting to find such large, low-moving loads. No permit for any oversize or overweight vehicle is valid on the Milwaukee Expressway System, all of which is under jurisdiction of the State Division of Highways. We believe that drivers using conventional highways which have pedestrians, agricultural implements and farm tractors, horse-drawn vehicles and other slow-moving or large loads, are conditioned to expect such loads and therefore, it is less hazardous to place these permitted loads on conventional highways than on high-speed freeways.

Permits are not valid during the hours of darkness nor during the period beginning at 12 noon on the day preceding and continuing until sunrise on the day following every Sunday and major holiday. Permits are nonvalid on Saturday mornings from

May 15 to September 15 each year. Mobile homes greater than 12 feet in width are allowed to move between sunrise and 4 p.m. and between 6 p.m. and sunset on Mondays through Thursdays and between sunrise and 4 p.m. on Fridays, except that they may not move after 12 noon on the day preceding any holiday.

Furthermore, mobile homes over 12 feet in width may not be moved during the 7-8 a.m. morning rush hour and after 4 p.m. in certain counties and urban areas near some of the major cities. In addition, similar restrictions are applied to wider loads of all types. Many buildings over 12 feet wide must be moved only during the low traffic hours between 2 a.m. and 6 a.m. under proper police escort and with adequate lighting.

Permits are issued because there are many types of loads which cannot reasonably be divided and moved within statutory size and weight limitations. Examples of loads which are moved under single-trip or annual permits include: buildings, storage tanks, construction equipment such as power shovels or bulldozers, mobile homes and modular building sections, wood and steel power poles, prestressed concrete buildings and bridge beams,

large boats (such as those manufactured at Sturgeon Bay), electrical transformers and many types of industrial machinery. Examples of loads which cannot be moved under permit are: oversize truck tankers, loads which are oversize because they consist of a number of articles none of which exceeds statutory size limitations, or overweight loads which consist of more than one article.

Many Wisconsin industries depend upon their ability to secure permits for oversize or overweight loads. The Allis-Chalmers Company in Milwaukee is only one of many Wisconsin industries manufacturing large industrial machinery, some of which cannot be moved other than by highway. There are many mobile home and modular building manufacturers in Wisconsin who could not operate without permits. American Motors and General Motors vehicles assembled in Wisconsin could not be economically moved by highway except under a vehicle transportation permits allowing a load in excess of the statutory 55-foot length limit.

I hope that the foregoing fulfills your requirement for a description of the issuance of permits pursuant to Chapter 348, Wisconsin Statutes. I would be happy to provide additional details on any particular aspects of this activity.

RRW:dlb

AFFIDAVIT OF J. A. FLIPPIN

Filed October 20, 1975

[Caption Omitted in Printing]

STATE OF WISCONSIN)
) ss.
 COUNTY OF ROCK)

J. A. FLIPPIN, being first duly sworn on oath, deposes and says that:

1. He is the Licensing Supervisor of Janesville Auto Transport Company, the business address of which is Box 959, Janesville, Wisconsin 53545.
2. The business of Janesville Auto Transport Company is the for-hire transportation of new automobiles. In such business, Janesville Auto Transport Company operates under authority issued by the Interstate Commerce Commission and the Public Service Commission of

Wisconsin, under which it provides service in interstate and intrastate commerce.

3. The majority of the equipment operated by Janesville Auto Transport Company is truck and trailer combinations which are sixty-five feet in length. Except for the length, these tractor-trailer combinations are within the statutory size and weight limits authorized on Wisconsin highways. The sixty-five foot truck and trailer combinations are operated under annual permits issued by the Wisconsin Department of Transportation.
4. Attached hereto as Appendix JAF-A and incorporated herein by reference, is a picture of a sixty-five foot twin trailer combination and a sixty-five foot truck and trailer combination. The latter is the same type of equipment generally utilized by Janesville Auto Transport Company in its business.
5. Attached hereto as Appendix JAF-B and incorporated herein by reference is a certified copy of Page 46-A of the Report of Janesville Auto Transport Company, for the year 1974, which is on file with

the Wisconsin Public Service Commission. Appendix JAF-B correctly reflects miles operated by Janesville Auto Transport Company over highways in Wisconsin, including both two and four-lane highways, on which majority of equipment operated by Janesville Auto Transport Company was sixty-five foot truck trailer combinations similar to that pictured on Appendix JAF-A.

6. Janesville Auto Transport Company regularly operates a 65-foot truck trailer combination over two lane highways in Wisconsin serving many communities and including, by way of example, communities such as Rhinelander, Wausau, Stevens Point, Clintonville, Rice Lake, Richland Center, Mineral Point, and Elkhorn, all of which are served by movement of sixty-five foot truck trailer combinations over two lane highways.

/s/ J. A. Flippin

[Jurat]

JANESVILLE AUTO TRANSPORT CO.

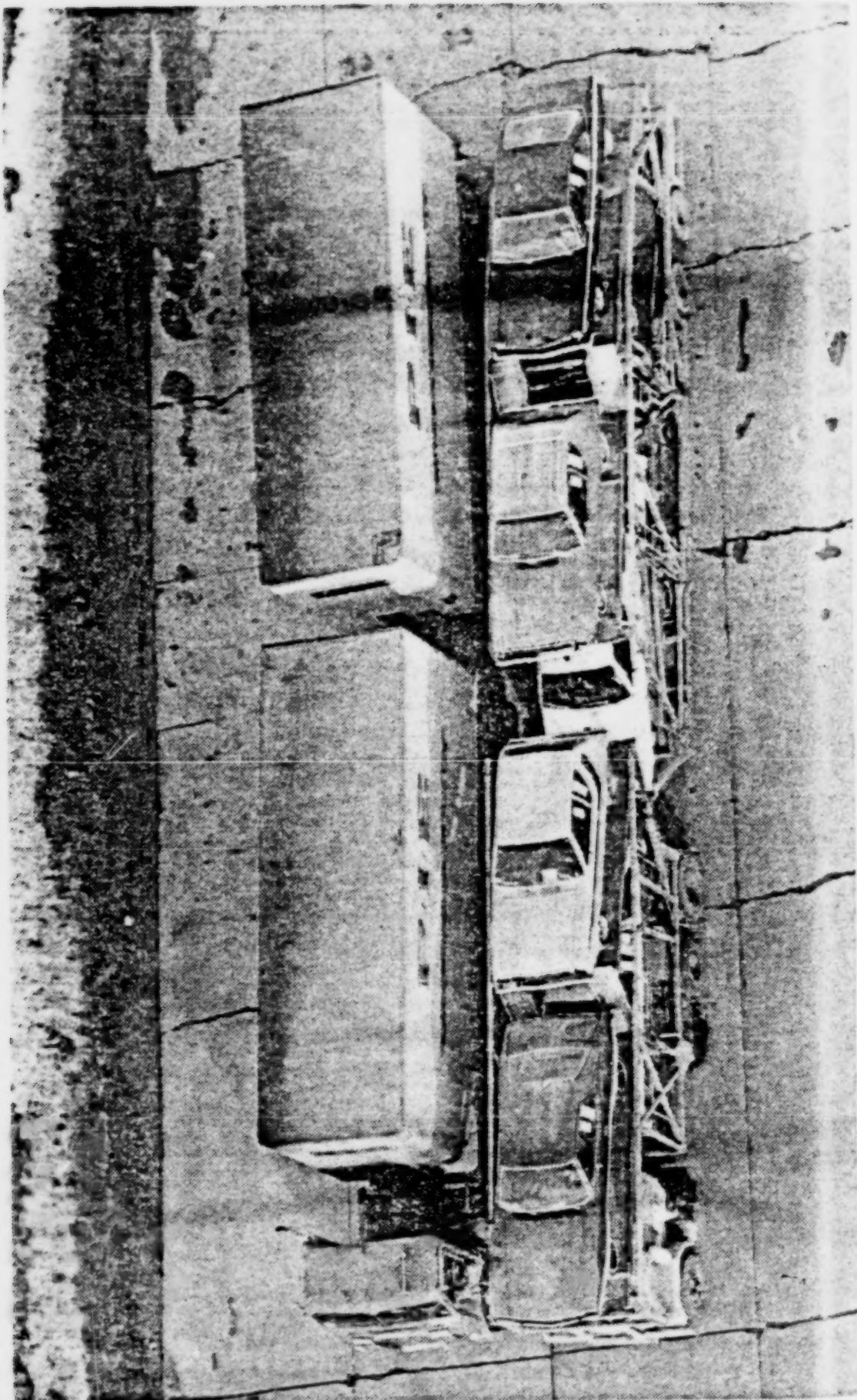
1974 Annual Report

Form 1-1975

44-A

WISCONSIN STATEMENT - PROPERTY CARRIERS							
OPERATING REVENUES							
Line No.	Particulars (a)	Intercity service Common (b)	Intercity service Contract (c)	Local Carriage (d)	Intercity service, for other Class I and II motor carriers (e)	Other operating revenues (f)	Total system operating revenues (g)
1	Wisconsin insurance	\$ 967,249	\$	\$	\$	\$ 098,290	\$ 1,065,539
2	Wisconsin insurance*	xxx	xxx	xxx	xxx	xxx	xxx
3	Originated in Wisconsin	11,147,745	-	-	xxx	xxx	11,147,745
4	Terminated in Wisconsin	199,049	-	-	xxx	xxx	199,049
5	Transit in Wisconsin	11,346,794	-	-	xxx	xxx	11,346,794
6	Wisconsin insurance - Total	11,346,794	-	-	-	-	11,346,794
7	Entirely non-Wisconsin	-	-	-	359,291	-	359,291
8	SYSTEM TOTAL	19,170,682	-	-	359,291	1,098,290	20,628,263
9	Wisconsin portion of line 6	2,661,957	-	-	-	-	2,661,957
10	Wisconsin total, lines 1 & 9	11,628,206	-	-	-	1,098,290	12,726,496
11	*The total charges accruing to the reporting carrier on traffic touching Wisconsin. The Wisconsin portion thereof should be stated in line 9.						
12	Give description of basis used for line 9: loaded - miles						
COMPARE WITH AND CHECK FOR DISCREPANCIES IN LINE 1							
FULL TITLE AND COMPLETE DISCLOSURE							
FILE ON FILE IN MY OFFICE							
DATED October 9, 1975							
SIGNED J. A. Flippin							
OPERATING STATISTICS							
VEHICLE MILES OPERATED IN WISCONSIN							
Line No.	Particulars (a)	Grand vehicles (b)	Vehicles loaded with drivers (c)	Vehicles loaded without drivers (d)	Total (e)		
13	Inter-city motor miles - common	-	-	-	-	-	-
14	Inter-city motor miles - contract	5,873,450	480,355	22,499	-	-	6,376,305
15	Inter-city motor miles - common	-	-	-	-	-	-
16	Inter-city motor miles - contract	5,873,450	480,355	22,499	-	-	6,376,305
17	TOTAL INTERCITY MILES OPERATED IN WISCONSIN	5,873,450	480,355	22,499	-	-	6,376,305
18	Miles in local carriage, including service for other carriers	-	-	-	-	-	-
OTHER STATISTICS							
19	Interstate Wisconsin tons carried in intercity service	-	-	-	77,809	-	77,809
20	Interstate tons carried in intercity contract use, out of, or through Wisconsin	-	-	-	440,920	-	440,920
21	TOTAL TONS CARRIED ENTIRELY OR PARTLY IN WISCONSIN	-	-	-	518,729	-	518,729
22	Ton-miles - intercity - On Wisconsin interstate shipments	-	-	-	5,487,349	-	5,487,349
23	Ton-miles - intercity - Value: Wisconsin on Wisconsin interstate shipments	-	-	-	21,072,312	-	21,072,312
24	TOTAL TON-MILES OF INTERCITY SERVICE PERFORMED IN WISCONSIN	-	-	-	5,508,669	-	5,508,669
Additional information on common carrier tonnage originated and/or terminated in Wisconsin						Wisconsin shipments	
25		Interstate		Intrastate			
26		77,809		394,660			
27	Tons received in Wisconsin by reporting carrier	From shipper		From connecting carrier			
28		77,809		440,920			
29	Tons delivered in Wisconsin by reporting carrier	To consignee		To connecting carrier			
30		77,809		440,920			
31		77,809		440,920			

BEST COPY AVAILABLE



STIPULATION AS TO ADDITIONAL EVIDENCE

Filed December 11, 1975

[Caption Omitted in Printing]

IT IS STIPULATED AND AGREED between counsel that the attached map showing the status of twin trailers on public roads and turnpikes in the various states as of November 1975, may be received and considered as evidence in this matter.

Dated this 2nd day of December, 1975.

BRONSON C. LA FOLLETTE

Attorney General

By: /s/ Albert Harriman

Assistant Attorney

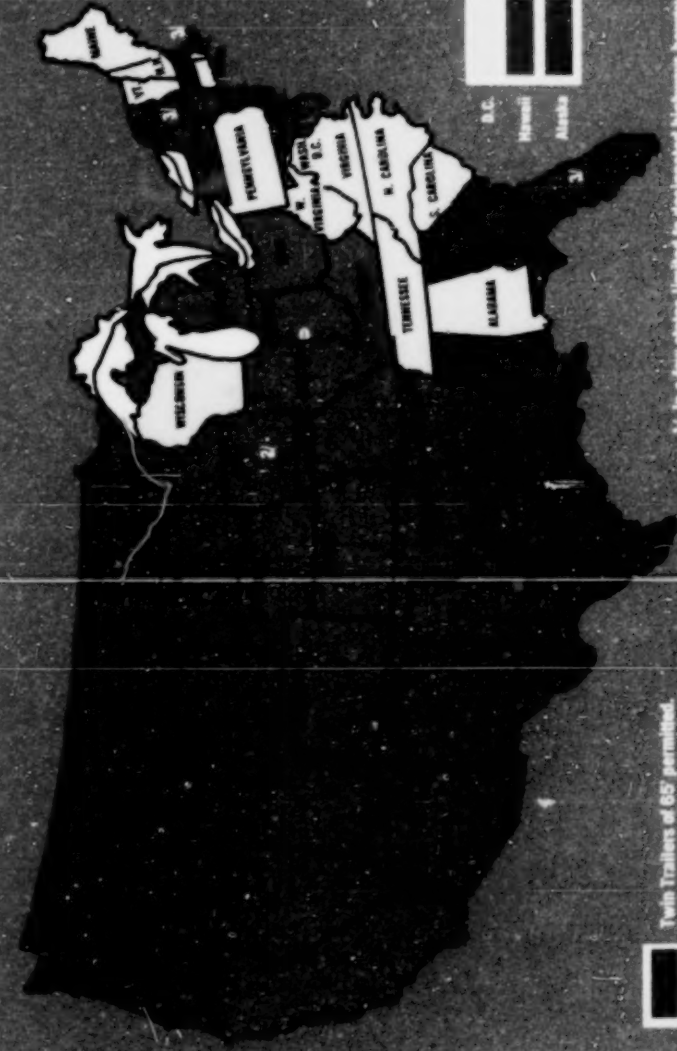
General

Attorneys for

Defendants

DeWitt, McAndrews & Porter,
S.C.

STATUS OF TWIN TRAILERS ON PUBLIC ROADS AND TURNPIKES 1/ NOVEMBER, 1975



AFFIDAVIT OF ROBERT F. HEMPHILL, JR.
Filed October 10, 1975
[Caption Omitted in Printing]

DISTRICT OF)
) ss.
COLUMBIA)

I, ROBERT F. HEMPHILL, JR., being first duly sworn on oath according to law depose and state as follows:

1. I am Associate Assistant Administrator for Transportation Programs, Office of Energy Conservation and Environment, Federal Energy Administration ("FEA"). Prior to joining FEA's predecessor agency, the Federal Energy Office, I was a Management Associate in the Natural Resources, Energy and Science area at the Office of Management and Budget. I hold a Bachelor of

Science degree from Yale University, a Master of Arts degree from UCLA, and a Master of Business Administration degree from George Washington University. This affidavit is based on my personal knowledge and the records of the FEA and is submitted for the sole purpose of presenting this Court with the FEA's views on the energy conservation potential of twin-trailers. The FEA takes no position on other issues which have or might arise in this litigation.

[2]

2. The FEA, as part of its congressionally-mandated tasks of promoting efficient use of energy resources and energy conservation, has researched the energy conservation potential of twin-trailers used in commercial freight transport on public highways. The conclusions the FEA has reached will be briefly discussed below; the data developed by the FEA is attached to this affidavit in Exhibits A-C.

* * *

4. The State of Wisconsin's restrictions on twin-trailers are of concern because the State straddles two major transcontinental highways, Interstate 90 and Interstate 94. These interstate

routes form the principal, most direct, non-circuitous interstate routing between Chicago, Illinois and points East and between Minneapolis-St. Paul, Minnesota and points West. Because twin-trailers carrying general commodity freight are prevented from traveling the Wisconsin segments of both Interstate 90 and Interstate 94, no general commodity "through-service" is available between Detroit and Seattle, Chicago and Minneapolis, and intermediary points. Thus, the twin-trailers must be uncoupled and hauled separately through Wisconsin or must follow a circuitous route and by-pass the State. In addition, shipments or containerized freight on the Great Lakes, which are particularly adaptable to transport on twin-trailers, are often diverted from the Port of Milwaukee to other cities because of Wisconsin's limitation.

[3]

5. In January 1975, a joint Federal study concluded that if weight, length and configuration limits imposed upon truck operations by Federal and State laws were unified, significant reductions in heavy duty truck fuel consumption could [sic] be realized. Moreover, the interstate commerce which has to pass through Wisconsin on Interstates 90 and 94 has much to gain in improved modal

operations and energy efficiency from greater uniformity in legal limits on the dimensions and weights of the freight motor vehicles. For these reasons, the FEA wishes to present this Court with its specific views on the energy conservation implications of the use of twin-trailers.

B. Analysis of Energy Efficiency of Twin-Trailers**

6. In most intercity freight movements, greater economic and fuel efficiencies are obtained from increased dimensions and weights of vehicles, since the energy efficiency per payload ton-mile is decreased as the gross vehicle payload increases up to a certain limit. Similarly, twin-trailer movements of freight will allow increased payload per vehicle with the increased volume and will permit freight to be hauled in fewer vehicles. It will also increase utilization of engine and driver capacity and will permit truck operators to easily consolidate two smaller trailers without requiring separate pick up and delivery. Overall, in order to haul a given payload of freight tonnage, the trade-off will be larger and heavier vehicles in exchange for a reduced number of vehicle units on interstate routes operating at greater efficiency levels.

[4]

7. Within the context of existing weight limits, the FEA's research study, which utilizes national average data, indicates that twin-trailers offer 20 percent fuel savings over single-unit trailers for low density loads. Specific energy savings will be the product of fuel savings between double and single trailers and the amount of diversion from single to twin-trailer units.

8. Utilizing actual operational data from a large transcontinental motor carrier firm, Yellow Freight Systems, Inc., the FEA extended its analysis of energy savings resulting from a diversion of freight movements from single to twin-trailer units. Our conclusions indicate an energy savings potential of 12.0 percent in operating twin-trailers at a combination length of 65 feet rather than 45-foot trailers with a combination length of 55 feet. A shift from 40-foot trailers to twin-trailers will save 19.5 percent of the diesel fuel which was previously used to carry the same volume of freight.

9. Our analysis further indicated only insignificant variations in the 12.0 percent and the 19.5 percent energy savings estimates, if the data utilized were adversely subjected to a 10 percent error. The three derived variables used in the

calculations are the trailer cubic capacity utilization rate, the average weight of a cubic foot of general freight, and the energy consumption rate involved in hauling freight by truck (BTU per ton-mile). When these variables are subjected to a 10 percent error factor, the energy savings which results [sic] when 40 to 45-foot single trailers are replaced with 65-foot twin-trailers would be 19.1 percent and 11.7 percent, respectively.

[5]

C. Additional Considerations.

10. FEA's analysis indicated improvements in the energy efficiency of truck operations with the relaxation of existing size and weight limitations, but these savings must be assessed against the impacts on highway safety and maintenance costs, as well as shifts in modal competition.

11. The effects of twin-trailers on intermodal competition is generally limited to rail freight, because trucking tariffs are usually too high to attract the low value, low-rated goods that characterize practically all barge freight and a significant portion of rail freight. In addition, the high value, high tariff goods moving by air freight generally require a level of service that trucks cannot provide. As a result, the principal classes of freight which especially lend themselves to twin-

trailer use are mail, parcels, freight-forwarded traffic, and COFC/TOFC [Container On Flat Car/Trailer On Flat Car] freight moving by rail.

12. Although rail freight is generally less energy intensive in areas with flat terrain such as Wisconsin, it is doubtful that the introduction of twin-trailers in one additional state in the region will greatly influence modal choice of long distance freight and shift traffic from the railroads.

D. Conclusion.

13. Although the FEA emphasizes that the issue of allowing twin-trailers to use the interstate routes in Wisconsin should not be resolved on an energy basis alone, our analysis shows significant potential for energy conservation through the utilization of twin-trailers. Motor carriers of general commodity freight will be able to travel across Wisconsin by direct and efficient routings and integrate and utilize uniform equipment in their operations East and West of Wisconsin. Further, the ability to use twin-trailers on the interstate routes going through Wisconsin will allow the motor carriers

[6]

of interstate and intrastate commerce to utilize their most energy efficient equipment, reduce their costs, and eliminate unnecessary unloadings and

reloadings at the Wisconsin border. In addition, containerized freight which is particularly adaptable to the utilization of twin-trailer services will be attracted to energy efficient barge transportation through the Port of Milwaukee.

14. The FEA is vitally concerned with this Nation's current energy problems as well as steps that can be taken to bring about economies in energy consumption. The objective of our analysis, therefore, is to present our specific views on the energy consumption aspects of the instant controversy.

/s/ Robert F. Hemphill, Jr.

[Jurat]

[Exhibits Omitted in Printing]

[Footnotes Omitted in Printing]

SWORN TESTIMONY OF R.E. WRIGHTSON

Filed October 20, 1975

[Caption Omitted in Printing]

[1]

...I am Director of Corporate Planning for Consolidated Freightways Corporation of Delaware ("CF") and have held this position since October, 1974.

Prior to that time, I was Director of Budgets for CF from June 1, 1967 to October, 1974. I have been employed by CF in the Accounting and Financial Department since July 1, 1962.

As Director of Corporate Planning, I am responsible for short, medium, and long-range financial planning, for coordination and preparation of operating plans for use by all levels of operation, and for all types of financial analyses and operating review. My duties require me to be familiar with all phases of the operations of the Company, which

[2]

necessitate traveling to management meetings and reviewing operations on location throughout CF's system.

I hold a Bachelor of Science Degree in Business Administration from San Jose State College in San Jose, California. I have been designated by CF to give the following sworn testimony in this proceeding.

PURPOSE AND SCOPE OF TESTIMONY: The purpose of my testimony is to demonstrate the cost burden on CF directly related to the refusal of the State of Wisconsin to allow or "permit" operation of 65-foot Twin Trailer combinations ["Twin Trailer(s)"] over certain interstate highways in Wisconsin.

The data is specifically limited to the cost burden on CF operations which would be eliminated by the permit sought by my Company from the Wisconsin Department of Transportation, by application dated April 10, 1975. The application is attached as a part of Exhibit B to the Complaint.

The cost burden as reflected in the data presented herein relates solely to Wisconsin's prohibition of Twin Trailer combinations on Interstate Highways 90 and 94 (and alternate Interstate 894) between the Wisconsin-Illinois boundary and the Wisconsin-Minnesota boundary [over routes between (a) South Beloit, Illinois and Lakeland, Minnesota, and (b) Zion, Illinois and Lakeland, Minnesota]. The data relates solely to

movement of interstate freight through Wisconsin and to or from CF's terminal locations at Milwaukee and Madison.

* * *

[3]

THE COST BURDEN: The cost burden, as described herein, is calculated on the basis of operations for the year ending June 30, 1975. Wherever possible, data for the year July, 1974, through June, 1975, was utilized. Where data for the full year ending June 30, 1975, was not available, the data was annualized on the basis of operations for the six month period ending June 30, 1975. The details of the data base are identified in the attached schedules.

These costs are incurred by CF on operations solely within the scope of the denied Twin Trailer permit. However, the entire cost burden, even within this limited scope, cannot be completely quantified or entirely identified.

The identifiable cost burden to CF can be summarized as follows:

TABLE I

A.	The cost burden of dividing Twin Trailer combinations for operations to, from, and through Wisconsin.	\$ 389,898
B.	The cost burden of operating 55-foot tractor semi-trailer combinations ["Semi(s)"] in lieu of Twin Trailer combinations for Madison and Milwaukee freight.	\$ 81,440
C.	The cost burden of operating Semis in lieu of Twin Trailer combinations for Minneapolis terminal freight.	\$ 244,587
D.	The cost burden of operating Twin Trailer over longer mileage routes around Wisconsin rather than over shorter mileage routes through Wisconsin, on Pacific Northwest and Montana freight.	\$1,334,876
	PROJECTED ANNUAL COST BURDEN	<u>\$2,050,081</u>

ITEM A:

Schedule REW-A, attached hereto, describes the sources and methods of calculation of the cost burden reflected in Item A above. This element of the estimated cost burden is \$389,898, annually. This amount is the added cost of dividing Twin Trailer combinations into single trailer units, in actual operations during the year ending June 30, 1974, for movements over interstate highways (1) between an Illinois staging area and CF's Milwaukee terminal; (2) between an Illinois staging area and CF's Madison terminal; and (3) between CF's Milwaukee and Minneapolis terminals. These additional costs also include costs of moving Twin Trailers as single trailer units between the Illinois staging area and CF's Milwaukee terminal in connection with movement of freight to and [5]

from other CF Wisconsin terminals. The Beloit and Zion, Illinois, staging areas exist for the sole purpose of dividing Twin Trailer combinations to comply with Wisconsin regulations. At the Minnesota-Wisconsin boundary, CF's Minneapolis terminal is used for this purpose.

Each step of my calculation of this cost is reflected in Schedule REW-A. Footnotes to Schedule REW-A specifically identify the source of data and means of calculation.

The miles of operation of Twin Trailers as single units used in Schedule REW-A were taken from CF payroll records. Each driver's time cards show each point-to-point dispatch leg the driver makes and the type of equipment operated. As an example, a driver dispatched from Akron, Ohio, to Milwaukee with a set of Twin Trailers will produce a time card which shows Akron, Ohio as the origin, the Zion, Illinois staging area as the destination, and equipment used as Twin Trailers. The time card will then reflect a movement from the Illinois staging area to Milwaukee with one of the Twin Trailer units. Another driver's time card will show a movement from the Illinois staging area to the Milwaukee terminal with the second Twin Trailer.

The time cards will show just the reverse for a Milwaukee to Akron trailer, or any other Wisconsin origin and/or destination, moving to or from Twin Trailer states. By comparison, a driver dispatched from Akron to Milwaukee, in a Semi will produce a time card showing Akron, as the origin and Milwaukee as the destination, with no Illinois staging area data.

These time cards are processed weekly and are summarized monthly, in four or five week periods as appropriate, to produce a variety of

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"monthly" reports. One of these reports is entitled "Route Usage Report." This report shows the number of miles and trips operated for each route on a point-to-point basis. From this monthly report, I was able to determine the number of trips and miles of operation of Twin Trailers as single units (1) between Illinois staging areas, on the one hand, and on the other, Milwaukee or Madison, and (2) between Minneapolis and Milwaukee.

CF's regular monthly reports also include a report entitled the "Linehaul Cost Statement." This statement shows current month and year-to-date expenses showing costs per mile for various linehaul categories such as tractor maintenance, trailer maintenance, driver's wages, fuel and oil, equipment insurance linehaul equipment depreciation, and other items. From this statement, I was able to determine the portion of linehaul cost per mile which varies with the number of miles operated. This calculation is referred to as "Variable Costs Per Mile." Multiplying the variable costs per mile by the number of miles of operation which would be avoided by operating Twin Trailer combinations in Wisconsin between the Illinois staging areas and Milwaukee or Madison or between Minneapolis and Milwaukee produced the

dollar amount of the net cost burden of Wisconsin's disallowance of this operation. This portion of the cost burden amounted to \$232,752 for the year ending June 30, 1975, to which was added other non-mileage based cost factors, reflected on Schedule REW-A, to reflect the total burden of \$389,898, as the result of dividing Twin Trailer combinations moving within the scope of the permit application at Wisconsin borders.

ITEM B:

Schedule REW-B, attached hereto, describes the sources and methods of calculation of the cost burden reflected in Item B above. This

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element of the estimated cost burden is \$81,440, annually. This amount is the added cost of operating Semis [utilizing 45-foot trailers] in lieu of Twin Trailer combinations for Madison and Milwaukee freight.

Each step of my calculation of this cost is reflected in Schedule REW-B. Footnotes to Schedule REW-B specifically identify the source of data and means of calculation.

The calculations of Item B are based upon a comparison of total variable costs for operating Semis versus Twin Trailer combinations on traffic which presently moves in Semis to or from Milwaukee, or Madison.

This data is derived from CF's on-line equipment control system, from which I was able to select and produce a report entitled, "Movement Continuity by Location." This report reflects the number of Semis that are loaded to or from the Milwaukee and Madison terminals by terminal origin and destination. Using the selected origin/destination sets and miles of operation as reflected on the "Route Usage Report," I was able to determine the number of miles operated by Semis, to and from the Milwaukee and Madison terminals. I, then, calculated the cost burden by use of the Variable Linehaul Cost Per Mile as reflected on Schedule REW-B.

The calculation of Item B excluded freight which would clearly continue to move in Semis even if Twin Trailers were permitted on interstate highways in Wisconsin, within the scope of CF's application of April 10, 1975. However, general commodity freight is most suitable to transportation in Twin Trailers. Where Twin Trailers are permitted,

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not less than 89 percent, and up to 100 percent of CF's freight moves in Twin Trailer combinations. Based upon CF's over-all operations, I have concluded that not more than 10% of CF vehicle

miles occur in Semis where Twin Trailers are permitted. The calculations in Schedules REW-B and REW-C reasonably account for this factor and are not significantly distorted by it.

If CF were permitted to operate Twin Trailer combinations into and out of Milwaukee and Madison in lieu of Semis, it would operate fewer schedules to move the same quantity of freight. To demonstrate this cost burden, I have compared the average weight per trailer in Twin Trailer combinations, and Semis and by a series of calculations have converted Semi miles operated into and out of Milwaukee and Madison to operation of Twin Trailer combinations. This calculation produces a representative estimate of the number of added and unnecessary miles CF operates by reason of the forced use of Semis in lieu of Twin Trailer combinations on Milwaukee and Madison freight both within and beyond Wisconsin's borders. As indicated above, by applying the Variable Line Haul Cost Per Mile to this mileage factor, I calculated this element of the cost burden to be \$81,440 annually.

ITEM C:

Schedule REW-C, attached hereto, describes the sources and methods of calculation of the cost burden reflected in Item C above. This element of

estimated cost burden is \$244,587, annually. This amount is the added cost of operating Semis in lieu of Twin Trailers for Minneapolis terminal freight both within and beyond Wisconsin's borders. The costs reflected in this schedule are calculated in the same manner as those

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indicated in Item B and Schedule REW-B. In this instance, however, the base is Minneapolis origin and destination trailers which must be moved through Wisconsin. The selection is based upon the "Movement Continuity by Location" report, as described in Schedule REW-B.

ITEM D:

Schedule REW-D, attached hereto, describes the sources and methods of calculation of the cost burden reflected in Item D above. This element of the estimated cost burden is \$1,334,876, annually. This amount is the cost burden of operating Twin Trailers on longer mileage routes around Wisconsin rather than on shorter mileage routes through Wisconsin on Pacific Northwest and Montana freight.

Each step of the calculation of this cost is reflected in Schedule REW-D. Footnotes to Schedule REW-D specifically identify the source of data and means of calculation.

To calculate the cost for this Item, I reviewed CF's present linehaul operation for movement of freight from CF terminals in its Eastern area, Michigan (Division 17) area, Chicago area, and Milwaukee area, to CF's Pacific Northwest (Oregon and Washington) and Montana area terminals.

* * *

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To avoid Wisconsin's Twin Trailer ban, relays presently move freight from Eastern points to the Pacific Northwest points, and return, via Cameron, Missouri, and North Platte, Nebraska, even though relays through Wisconsin via interstate highways would save varying but substantial numbers of miles depending upon the origin and the destination.

Tonnage to the selected Western points from the selected Eastern points, shown in Schedule REW-D, over balances the tonnage moving in the opposite direction (easterly direction) by 1.40 to 1. Accordingly, the tonnage moving in the westerly direction dictates the number of schedules moving in both directions. Hence, tonnage moving in the westerly direction was used as the basis for determining the added cost of operating Twin Trailer routes around rather than through Wisconsin.

The estimate of this burden was developed from the following sources:

1. Point-To-Point Tonnage and Revenue Report.
2. Outbound Laden Load Factor for Eastern area, Michigan (Division 17) area, Chicago area, and Milwaukee area are Terminals from the Terminal Income and Expense Statement.
3. Miles of actual operation developed from the Route Usage Report.

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4. Cost per mile from the Line-Haul Cost Report, based upon costs for the year ending June 30, 1975.

The Point-to-Point Tonnage and Revenue Report is a recap of CF freight bills on a monthly and year-to-date basis. This report summarizes freight bills by each origin and destination showing the number of shipments, weight, and revenue for each traffic lane. Summarizing the point-to-point weight moving from the selected Eastern points to the selected Western points, I determined the total freight that would be transported through Wisconsin, if Twin Trailer combinations were permitted on interstate highways in Wisconsin.

Having derived the tonnage moving in the westerly direction, I then calculated the number of Twin Trailer schedules required to move the

tonnage. I divided the weight to be moved by the appropriate outbound load factor for each terminal area (the Eastern area, Michigan area, Chicago, Milwaukee, etc.). For example, the weight to be moved from the Eastern area to the Pacific Northwest was divided by the Eastern area load factor to determine the number of schedules necessary to move that weight. In a similar manner, Michigan weight moving to the selected destination area was divided by the Michigan load factor to determine the number of Twin Trailer schedules necessary to move that freight.

To determine the mileage savings by operating through Wisconsin, I compared the miles developed from the Route Usage Report, for routing via Cameron and North Platte for the selected operations, to the miles for routing via Wisconsin. I selected certain point-to-point combina-

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tions to represent the miles involved via the different routes. The destination points selected were Portland, Seattle, and Billings. The origin points selected were Akron for the Eastern area, Chicago for the Michigan area, and Chicago and Milwaukee for their own areas. These point-to-point sets represent the mainline relay points over which the freight presently moves and over which

it would move if routed via Wisconsin. Based on these point-to-point sets, I determined the mileage savings which would be derived from operating through Wisconsin for each trip. I multiplied this product by the number of schedules required to move the actual freight involved, which produced a figure representing the total mileage savings which would be realized via Wisconsin.

The added cost of the longer routes were then determined by multiplying the "Variable Line-Haul Cost Per Mile" by the total mileage savings. The cost burden, thus estimated, was then doubled, since CF operates by relays. As indicated, due to balance, the schedules operated in the westerly direction determine the number of schedules operated in the easterly direction.

The total cost burden for operating the longer mileage routes was thereby calculated to amount to \$1,334,876, annually, based upon annualized operations for the year ending June 30, 1975.

COMPARATIVE INITIAL COST OF TWIN TRAILER UNITS: Set forth in Table II below is a comparison of unit costs for a Twin Trailer combination and a Semi combination for the years 1972 and 1975, showing that the effective initial investment in Twin Trailer equipment is similar to or less than that in Semi equipment.

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In 1975, for example, the original investment cost for a Twin Trailer combination is only 0.48% more than that for a Semi combination. Yet, the capacity of a Twin Trailer over a Semi combination, as reflected on Schedules REW-B and REW-C, is in excess of 10%, by average weight of loading.

* * *

TWO MILLION DOLLARS IS THE MINIMUM BURDEN: The cost of providing service does not dictate all operational practices. Service required by the public, such as "overnight" and other "guaranteed" time in-transit factors, may occasion operations which are not the most efficient in terms of cost.

The operations, on which cost burden is identified as reflected in Items A and D, i.e., the cost burden of operating Twin Trailers as single units and the cost burden of operating longer mileage routes on Pacific Northwest and Montana freight, are the most efficient under the

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circumstances. The burden reflected in Items A and D is, therefore, a true measure of the minimum cost burden of the Wisconsin ban.

The cost burden reflected in Items B and C, experienced as a result of using Semis in lieu of Twin Trailer combinations, is wholly the result of the Wisconsin [sic] ban. In my experience, the use of Semis as reflected in Items B and C represents CF's best operational judgment as to choice of equipment at the time of movement, under the conditions dictated by the Wisconsin ban. These items represent a true measure of the cost burden of Wisconsin's denial of Twin Trailer permits for operations on interstate highways in Wisconsin.

The cost burden quantified in Items A through D is understated, if consideration is given to decline in the economy during the year ending June 30, 1975. Schedule REW-E demonstrates the decline of tonnage transported by CF comparing the first half operations 1974 to 1975. For the factors cited in Schedule REW-E, the decline was between 11 and 28%. Since June 30, 1975, CF's tonnage experience has begun to improve with an improvement in the economy, although it remains below 1974 tonnage. The period of time utilized in the Table I, Projected Annual Cost Burden, accordingly, tends to understate the burden compared to a period of economic growth or stability. The time period utilized herein for calculating the burden, included costs through

June 30, 1975, only. This understates the real cost burden resulting from known increases in costs of operation since that date. For example, labor cost increases, effective under the Teamster contract on July 1, 1975, have increased the burden of the Wisconsin ban.

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CF operates under the same rates approved by the Interstate Commerce Commission and other regulatory agencies having jurisdiction, as do all other common carriers of general commodities having comparable operations. Schedule REW-F, attached hereto, compares the general freight revenue, pre-tax profit, and operating ratio of CF to the average in its industry. The operating ratio is the ratio of operating expenses to revenues. For the five years ending with 1974, CF's average operating ratio was 92.4, while the industry average for the same period was 94.5. In my opinion, the CF's lower operating ratio reflects its cost and service conscious management, which is responsible for managerial decisions which have minimized the cost burden set forth in Items A through D, resulting from Wisconsin's ban on Twin Trailers on interstate highways in Wisconsin. The operations, therefore, reflected in Items A through D, demonstrate a burden, minimized to the fullest extent possible.

/s/ R.E. Wrightson

[Jurat]

* * *

[Footnotes Omitted in Printing]

[Schedules Omitted in Printing]

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SWORN TESTIMONY OF JOHN A. EBELING

Filed October 20, 1975

[Caption Omitted in Printing]

* * *

[3]

I.

IDENTIFICATION: My name is John A. Ebeling. I am Vice President, Central Area, Consolidated Freightways Corporation of Delaware ("CF"). My business address is P.O. Box 5138, Chicago, Illinois 60680.

I am presently responsible for forty-seven terminals operated by CF in the Central United States, extending from Canada on the north, to Kentucky on the south, Omaha on the west, and Ohio on the east.

* * *

[4]

IDENTIFICATION OF CONSOLIDATED FREIGHTWAYS OF DELAWARE: CF is a Delaware corporation with its principal place of business at 175 Linfield Drive, Meno Park, California 94025.

CF is a common carrier of general commodities operating under Certificate of Public Convenience and Necessity No. MC-42487, issued by the Interstate Commerce Commission and registered with the Wisconsin Public Service Commission under No. OS-730. This Certificate authorizes operations in forty-two states and Canada.

* * *

The average weight per shipment on CF's system in 1974 was 992 pounds. In the first half of 1975, the system average weight per shipment was 975 pounds. On freight moving in interstate commerce to and from Wisconsin, the average weight per shipment in 1974 was 984 pounds. In the first half of 1975, the average weight per shipment was 957 pounds.

As a common motor carrier, CF provides service between such points as the Detroit Commercial Zone and the Seattle Commercial Zone, as well

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as zones and points in between, via routes traversing the state of Wisconsin via Interstates 94 (and alternate Interstate 894) and 90.

* * *

Twin Trailers are permitted on the entire length of Interstate 94 and connecting routes between Detroit and Seattle, with the exception of that segment of Interstate 94 in the state of Wisconsin. Twin Trailers are similarly barred on Interstate 90 in Wisconsin. But for Wisconsin's Twin Trailer ban, Twin Trailer general commodity through-service would otherwise be available between Detroit and Seattle, Chicago and Minneapolis, and other points in between.

In terms of economy and quality of service, Twin Trailers have proved to be the optimum type of equipment for carriage of less-than-truckload ("LTL") general commodities.

[6]

COPING WITH THE WISCONSIN BAN ON TWIN TRAILERS: The Wisconsin Twin Trailer ban plays havoc with CF's interstate and transcontinental operations and forces CF to choose among limited alternatives, none of which is desirable or satisfactory to the public or to CF.

These alternatives, all of which are in use on a daily basis, are:

1. Dividing Twin Trailer combinations into single units at Minneapolis and Illinois staging areas for operations to, from, and through Wisconsin.
2. Operating 55-foot tractor-trailer combinations ["Semi(s)"] in lieu of Twin Trailer combinations on through schedules in Wisconsin and beyond Wisconsin.
3. Operating Twin Trailer combinations over circuitous routes around Wisconsin.

Division of Twin Trailer Combinations: For freight moving to and from Wisconsin, CF divides Twin Trailer combinations to operate as single units on highways in Wisconsin, in a shuttle service between Wisconsin boundaries and CF's Wisconsin terminals. Outside of Wisconsin, the units are operated in combination.

Twin Trailer combinations carrying freight inbound to Wisconsin are divided at CF's Minneapolis terminal and at staging areas at South Beloit, Illinois, and Zion, Illinois. The two Illinois' staging areas are maintained solely for this purpose and are entirely the result of the Wisconsin Twin Trailer ban. Operations at the Zion location were originally conducted at CF's Waukegan terminal.

The Zion location, however, closer to the Wisconsin border, was established in 1969. The South Beloit location was established in 1973. Each facility consists of a graded parking lot located as close to the Wisconsin state line as possible. CF parks equipment (dollies and trailers) utilized in Twin Trailer operations at these locations.

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As an example, a Twin Trailer combination inbound to Wisconsin is routed to one of the staging areas. The driver unhooks and drops the rear trailer and dolly. In some instances, if the rear trailer is urgently needed, he will unhook and drop both trailers and dolly, and, then, re-hook the rear trailer for immediate movement to the Wisconsin location.

In most cases the driver performs this work alone and will take from fifteen minutes to one hour to complete the job. After unhooking is accomplished, he will then proceed with one of the two trailers to Milwaukee from Zion, or to Madison from South Beloit. On his arrival at the Wisconsin terminal, the driver will deliver the bills of lading for both Twin Trailer units to the supervisor of line-haul operations and inform the supervisor which trailer has been left at the Illinois staging area. The remaining trailer will then be brought to

the terminal by another over-the-road driver assigned to the specific job of shuttling trailers between the Wisconsin terminal and the staging area.

Two drivers must, therefore, be utilized for each Twin Trailer schedule which is shuttled. One driver does the shuttling, while the other driver takes the schedule on to the next relay point. Most drivers who shuttle trailers to and from the staging areas will make from two to four round trips in a normal tour of duty. For example, each round trip between Milwaukee and Zion is 70 miles and takes approximately 1-1/2 hours driving time, in addition to any time spent on hooking and re-hooking trailers and on vehicle safety checks. In a typical month on the Milwaukee-Zion shuttle, drivers will operate over 14,000 miles to keep the staging area operation functioning. Drivers from Menasha, Green Bay, and Sheboygan terminals will also utilize the staging area.

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Instead of bringing outbound Twin Trailers as singles from their terminals into Milwaukee, they will take them directly into the staging area. This permits Milwaukee to dispatch line-haul tractors and single Twin Trailers to match trailers at Zion for over-the-road movement in combination without

incurring an additional shuttle for the purpose of matching. Had the requested permit been issued, Twin Trailer combinations would originate and terminate at the Madison and Milwaukee terminals and the Illinois staging areas would be closed.

Operating Semis in Lieu of Twin Trailer Combinations: In addition to dividing Twin Trailer combinations at Wisconsin borders, CF's operational judgment, in many instances, requires that Semis be used for an entire schedule both in Wisconsin and beyond. In other words, the Wisconsin Twin Trailer ban forces CF to operate Semis on highways in other states where Twin Trailer combinations are permitted, as well as on highways in Wisconsin. This is particularly true, for example, for freight moving between terminals east and south of Minneapolis, on the one hand, and CF's Minneapolis, Fargo, Owatonna, and Winnipeg terminals, on the other hand. All of this freight must traverse Wisconsin.

The managerial judgment to utilize Semis results in the additional encumbrance of equipment incompatibility. Tractors used in Twin Trailer combinations are single axle, while tractors used in Semi combinations are tandem axle. Tandem axle tractors are not used to move Twin Trailer combinations. The result of utilizing Semis for

Minneapolis terminal operations, for example, is that certain power equipment must be matched for return movement with Semi trailers rather than move in continuous operation in CF's line-haul relay system, which utilizes Twin Trailer

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combinations, as more fully described below.

To the extent that the Wisconsin ban forces CF to utilize Semis in lieu of Twin Trailer combinations, it imposes additional loading and unloading time, additional time and costs for handling pick-up and delivery, additional break-bulk or re-shipment handlings, and additional opportunity and incidence of freight loss and damage, as more fully described below.

Use of Semis for Minneapolis terminal freight is required in CF's best operational judgment, by operating costs and service factors. The other alternatives are transfer of freight between Semis and Twin Trailers at the Wisconsin border, or movement of freight in Twin Trailers in shuttle operations through Wisconsin. Transfer of freight was ruled out due to excessive operational costs, delays in-transit, potential damage, and other factors which would prejudice the adequacy of service. A shuttle operation for Minneapolis terminal freight similar to that operated on freight

originating and terminating at Wisconsin terminals was ruled out due to operational costs. Where CF uses Semis on Minneapolis terminal freight, it is the best choice under the circumstances.

Circuitous Routes Around Wisconsin: For freight moving between eastern areas and the Pacific Northwest, operations presently are conducted via Cameron, Missouri, and North Platte, Nebraska. The most direct routing of this transcontinental traffic would be over Interstate Highways in Wisconsin.

The longer routing is dictated by the Wisconsin ban on Twin Trailer combinations. Forced to make a management choice among (1) movement of transcontinental freight in Twin Trailer combinations east and west of

[10]

Wisconsin, and in Twin Trailers as single units on Interstate Highways in Wisconsin, (2) movement of transcontinental freight between these territories in Semis, and (3) movement of transcontinental freight in Twin Trailer combinations via Cameron and North Platte, CF determined that the least burdensome choice, to minimize cost and to maintain service efficiency, is to operate via the longer routing.

The burden of this routing is additional consumption of fuel and increases in other line-haul costs which vary with miles operated, including maintenance and repair d [sic] costs, driver wages, health and welfare benefits, and similar costs. Where these costs can be quantified, they have been quantified in the sworn testimony of R.E. Wrightson. Time consumed in operating over the additional miles, delaying shipments in-transit, and diminishing quality of service to the shipping public, cannot be quantified but is an equally real burden.

II.

NATURE OF "GENERAL COMMODITY" OPERATIONS: CF is obligated to provide service, under published rates, to all who call for service, without discrimination as to service or rates; without discrimination as to size of shipment within CF's commodity description; and without undue delay in either commencing or completing service.

As a general commodity carrier, CF transports the broadest range of freight, from air conditioners to castings, from baby bottles to toothpaste, from machine parts to typewriters, from plastic pellets to washing machines. A full listing of commodities transported by CF, consisting of some 800 pages, is contained in National Motor Freight Classification

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Tariff ICC-NMF 100B, which is published by the National Motor Freight Traffic Association, Inc., and filed with the Interstate Commission.

CF serves all types of shippers, including large and small manufacturers, retail merchants, hospitals, government offices, business institutions, and private residences.

CF serves every type of community from congested cities and their suburbs, to the smallest rural community.

CF TRANSPORTS SMALL SHIPMENTS: The type of public which is served by CF is reflected in CF's shipment statistics. During the year 1974, CF handled 7,071,544 shipments, for a total weight of 7,077,798,877 pounds. These operating statistics, by weight break, for the entire year 1974 and for the first half of 1975, are reflected as follows:

TABLE I
1974 Operating Statistics

Weight Breaks	Shipments	%	Tonnage	%
0 to 199 lbs.	3,156,108	44.6	329,339,657	4.7
200 to 499 lbs.	1,824,073	25.8	572,245,180	8.1
500 to 999 lbs.	909,030	12.9	629,819,799	8.9
1,000 to 9,999 lbs.	1,065,498	15.1	2,820,242,381	39.8
10,000 to 19,999 lbs.	62,070	.9	849,306,228	12.0
20,000 to 29,999 lbs.	23,586	.3	565,369,079	8.0
30,000 lbs. and over	31,179	.4	1,311,476,553	18.5
Total	7,071,544	100.00	7,017,798,877	100.00

1975 First Half Operating Statistics

Weight Breaks	Shipments	%	Tonnage	%
0 to 199 lbs.	1,412,501	45.3	146,920,079	4.8
200 to 499 lbs.	802,714	25.7	251,184,448	8.3
500 to 999 lbs.	396,041	12.7	273,902,887	9.0
1,000 to 9,999 lbs.	456,923	14.7	1,207,866,957	39.7
10,000 to 19,999 lbs.	26,148	.8	357,473,227	11.8
20,000 to 29,999 lbs.	10,299	.3	245,525,625	8.1
30,000 lbs. and over	13,174	.4	556,882,730	18.3
Total	3,117,730	100.00	3,039,755,953	100.00

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In 1974, 98.4% of CF's shipments by number and 61.5% by weight were less than 10,000 pounds each. In the first half of 1975, 98.4% of CF's shipments by number and 61.8% by weight were less than 10,000 pounds each. The large proportion of small shipments demonstrates the basic problem and the basic goal of CF's operation.

Successful operation may be defined in various ways. In terms of CF's obligation to the public as a common carrier, successful operation is the provision of timely service at a reasonable cost. To meet this goal, CF must consolidate numbers of small shipments from various origin areas, dispatch vehicles over-the-road frequently, and distribute shipments to various destination territories. This service goal requires minimizing the number of handlings of each shipment, avoiding loss and damage, dispatching over-the-road trailers as fully loaded as possible, and maximizing ability of city drivers on pick-up and delivery service to route themselves and be routed over the least distance possible.

CF's operating experience on shipments moving to and from Wisconsin is consistent with its over-all system operation. The traffic is reflected as follows:

TABLE II
1974 Operating Statistics

Weight Breaks	To Wisconsin		From Wisconsin	
	Shipments	Tonnage	Shipments	Tonnage
0 to 199 lbs.	122,420	13,430,285	147,494	16,374,180
200 to 499 lbs.	74,475	23,261,467	101,994	32,246,734
500 to 999 lbs.	36,199	25,045,168	52,5491[sic]	36,437,807
1,000 to 9,999 lbs.	41,366	109,557,520	61,405	159,749,972
10,000 to 19,999 lbs.	2,307	31,235,001	3,294	44,915,980
20,000 to 29,999 lbs.	822	20,020,850	1,089	26,118,133
30,000 lbs. and over	1,576	68,154,729	800	31,012,645
Total	279,165	290,705,020	368,535	346,855,451

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1975 First Half Operating Statistics

Weight Breaks	To Wisconsin		From Wisconsin	
	Shipments	Tonnage	Shipments	Tonnage
0 to 199 lbs.	51,974	5,609,645	64,276	7,153,273
200 to 499 lbs.	30,200	9,405,367	44,976	14,152,061
500 to 999 lbs.	14,196	9,780,678	22,727	15,765,453
1,000 to 9,999 lbs.	16,475	43,697,048	26,968	69,778,949
10,000 to 19,999 lbs.	944	12,845,052	1,346	18,342,621
20,000 to 29,999 lbs.	331	8,070,694	466	11,331,512
30,000 lbs. and over	567	24,347,830	356	13,876,139
Total	114,687	113,756,314	161,114	150,400,008

In 1974, by number of shipments, 98.3% of those destined to Wisconsin points and 98.6% of those originated at Wisconsin points weighed under 10,000 pounds. For the first half of 1975, by number of shipments, 98.4% of those destined to Wisconsin points and 98.7% of those originated at Wisconsin points were under 10,000 pounds. CF's experience on traffic originating and terminating in Wisconsin is comparable to the experience throughout its system.

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Traffic originated by CF at Wisconsin may be destined to any point on CF's system or be moved in interline or intermodal service to any point in the United States or port of export. The same is true of any shipment originated or terminated by CF, anywhere.

CF holds itself out to provide joint-line service with other common carriers and provides intermodal connections with rail, water and air carriers. CF participates in joint rates applying on interline connections. The following table reflects percentage of shipments and tonnages, direct and interline, handled by CF during the year 1974:

Table III
1974
[in percent]

	Shipments	Tonnage
CF originated and delivered	64.3	70.8
CF originated and gave to another carrier	18.9	14.4
Another carrier originated and gave to CF	14.8	13.0
Another carrier originated and gave to CF which gave to another carrier	2.0	1.8

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SUITABILITY AND STANDARD USE OF TWIN TRAILERS FOR GENERAL COMMODITY OPERATIONS: At 12 to 15 pounds per cubic foot, general commodity traffic is "low density." General commodity carriers can, therefore utilize all of the cubic capacity available in the equipment they operate.

The loaded weight of general commodity freight on both Semi and Twin Trailer combinations, generally falls well below statutory weight tolerances. Wisconsin's gross weight tolerance is 72,320 pounds. [sic] This permits weight payloads of as much as 42 to 44 thousand pounds. However, [15]

as a general commodity carrier, CF's average loading of Semis is 33,112 pounds compared to its average loading of Twin Trailer combinations at 36,630 pounds, based on Madison and Milwaukee Terminal weights per trailer, January through June, 1975.

Transportation of general commodities requires the maximum ability to consolidate small shipments for over-the-road movement, as expeditiously as possible. Public expectations of time-in-transit require overnight service on distances up to 300 miles, second-day service between 300 and 600 miles, third-day service between 600 and 1,000

miles, and fourth-day service over 1,000 miles. This is the standard for general commodity service. The ability to fill-up trailers for frequent dispatch over-the-road and the flexibility to combine trailers dispatched from different terminals are needs peculiar to the transportation of general commodities. Twin Trailers fulfill these needs.

Twin Trailer combinations are the industry standard for transcontinental common motor carriers of general commodities. Such carriers include Navajo Freight Lines, Inc.; IML Freight, Inc.; Pacific Intermountain Express Co.; Transcon Line, Inc.; I.C.X.; Ringsby-United, Inc.; and Yellow Freight System, Inc. By way of example, utilizing 1971 statistics, CF operated 229,934,172 miles, of which 70.9% were Twin Trailer miles. IML Freight, Inc., operated 74,727,668 miles, of which 56.1% were Twin Trailer miles. Pacific Intermountain Express Co., operated 112,557,112 miles of which 86.2% were Twin Trailer miles. Twin Trailer miles operated by CF continued to increase as a percentage of total miles operated, amounting to more than 89% of total miles in 1974, and as much as 100% of total miles in some territories.

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CF's LINE-HAUL RELAY OPERATION: Like other general commodity carriers, CF provides service in terminal-to-terminal operations.

CF's movement of line-haul schedules (vehicle combinations) between terminals is operated as a relay system. CF has established a main line relay operation between its major terminals throughout the country and a regional relay operation for the smaller terminals to feed freight into the main line relay. The main line operation can be analogized to two conveyor belts in continuous movement in opposite directions.

In this system a driver will move a schedule from a terminal to a relay point. Then, another driver will move it to the next relay point, and on, until the schedule arrives at its ultimate destination. When a driver arrives at a relay point, he will move another schedule back to his origin point, after taking any required or needed rest. In other words, for every schedule that is dispatched from a given point, a schedule must be matched with it in the return direction to maintain the continuous movement of freight, equipment, and drivers.

All relay runs are well under the established maximum running time, under rules of the U. S. Department of Transportation. They can easily be accomplished within the driver's allotted "on-duty" time at 55 miles per hour, including his completion of prior and subsequent vehicle inspection.

CF's Milwaukee terminal serves as a key part of the relay system. It is the responsibility of this terminal to insure that freight picked-up in outlying Wisconsin terminals destined for the eastern, central, and southern parts of the United States is relayed on an expeditious [17]

basis. Freight moving between Wisconsin and the northwestern part of the United States is often relayed over the Minneapolis gateway. Employees of the Milwaukee and Minneapolis terminals play an integral part in establishing the timing of the relay operation. The timing of the operation provides CF an opportunity for maximum control of compliance with safety regulations. To move the bulk of Milwaukee terminal freight in anything but Twin Trailers would disrupt CF's relay operation with equipment incompatibility, driver coordination, and freight handling problems.

SERVICE CONTROL CENTERS OR TERMINAL OPERATIONS: General commodity service is provided through a network of 194 terminals in forty-two states. The probability of each terminal's generating enough traffic destined to each other terminal to allow daily "direct" dispatch of a trailer is unlikely. Accordingly, the object in handling general commodity shipments is to

efficiently consolidate great numbers of small shipments for line-haul movements, minimizing intermediate handlings.

These terminals or centers are "grouped" geographically with the largest terminal in each group used as a re-ship or break-bulk location and designated as the "group service center." In addition to providing pick-up and delivery service in their respective commercial zones and service areas, the "group service centers" provide consolidation of shipments on both inbound and outbound traffic for all satellite terminals in the particular area. The group service centers are the main connecting points on the CF main line relay operation. CF operates twenty-two group service centers, each of which has the capability of forwarding a

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trailer to each other center on a daily basis. The 172 satellite terminals do not have this capability.

Each of CF's service control centers has office, dock, and, at some locations, garage facilities. The great majority are owned by CF. Each center has a staff of employees including a manager, office and dock personnel, city pick-up and delivery drivers, and, at some locations, over-the-road drivers and mechanics. Service control

centers are linked by an input/ output device linking our Control Computer System via our communication system and a long-line telephone network, in addition to conventional telephone service.

Service control centers serve areas much larger than the cities in which they are located. For example, the Fargo, North Dakota, center provided daily pick-up and delivery service at such North Dakota points as:

<u>TOWN</u>	<u>1970 POPULATION</u>
Adams	264
Belfield	1,130
Carson	466
Edmore	398
Fargo	53,365
Jamestown	15,385
Lisbon	2,090
Max	301
Napoleon	1,036
St. Thomas	508
Zap	271

Some of the service control centers are larger than the Fargo center, and some are smaller. The service area of the Fargo terminal and the size and type of the community served from Fargo are typical of the size and type of service area and communities served by CF throughout its system.

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CF COST AND SERVICE ORIENTATION:

CF's cost of service does not dictate all operational practices. Service required by the shipping public, such as overnight or other "guaranteed" time in-transit may occasion operations which are not the most efficient in terms of cost. CF's management closely monitors cost and service requirements on a continuing basis.

Twin Trailers provide significant advantages in transporting general commodities. The cost burden of operating Twin Trailers as single units in Wisconsin and the cost burden of operating Twin Trailer combinations over longer mileages, on transcontinental routes around Wisconsin, represent the minimum burden of the Wisconsin ban on Twin Trailer combinations. In CF's best judgment, these operations are the most cost efficient and the most service efficient available under the burden of Wisconsin's ban. The cost burden of using Semis in lieu of Twin Trailer combinations represents the same type of judgment under differing operational circumstances. For movement of general commodity freight, operating Twin Trailers as single units, operating Semis in lieu of Twin Trailers, and operating Twin Trailers around Wisconsin are absolutely not the most cost

efficient, most service efficient or most energy efficient operations. Operating Twin Trailer combinations on Interstate Highways in Wisconsin would be less costly and more efficient in all respects.

SCOPE OF CF'S OPERATIONS: Attached and incorporated herein, as Exhibit JAE-1, is a map showing CF's authorized routes of operation in forty-two states and the District of Columbia. In general, CF serves all points along its authorized routes and provides interline and interchange

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connections with other common carriers of general commodities to serve points beyond its system, which permits service between virtually all points in the United States.

* * *

CF owns and operates a fleet of some 19,000 units to serve its authorized territory. During the year 1974, CF handled 7,071,544 shipments for a total weight of 7,077,798,877 pounds.

CF'S SAFETY PROGRAM: CF's management of safety begins with driver hiring and extends through every phase of its operations.

* * *

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Physical qualifications and examinations are redone at least every 2 years, and every year after the employee has reached age fifty-five. Driver qualification files are utilized on a regular basis for checking performance and continued adherence to the original standard of employment.

CF drivers are trained to be specifically familiar with all of the equipment they operate. CF maintains standard model equipment throughout its operating system to facilitate complete acquaintance with available equipment by all driving personnel.

* * *

In addition to the inspection prior to movement, each driver must complete, in writing an Equipment Inspection and Condition Report (CF Form 252), after each movement.

* * *

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Safety of operation is also maintained through route planning and scheduling. CF's movement of line-haul schedules (vehicle movements) between terminals is operated in a relay system. The relay

system is used for close control of over-the-road operations and adherence to strict safety standards. Through scheduling under this system, CF maintains close management and control of drivers' time on-duty and assures adherence of operating personnel to the rules of the U. S. Department of Transportation, Bureau of Motor Carrier Safety, and CF's Safety Program.

* * *

CF'S MAINTENANCE PROGRAM:

CF's

maintenance program is safety oriented. CF has systems to assure both routine maintenance and maintenance in response to specific equipment problems.

* * *

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The drivers' Equipment Inspection and Condition Report is utilized to spot specific maintenance problems. These reports are processed daily, with repairs and corrective action taken prior to re-dispatch of the equipment.

All of the maintenance facilities have responsibility for performing preventive maintenance to both local pick-up and delivery equip-

ment and line-haul over-the-road equipment. All line-haul equipment is built to CF's specifications. CF has standardized power plants, running gear, and brake components. Standardization of equipment and component parts has resulted in maintenance personnel having complete knowledge of all equipment operated by CF, as opposed to having to be familiar with numerous models and varieties of equipment.

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For cost control and response to problem areas, all daily equipment repairs are reported to CF's computer center. From this data, computerized reports are processed for complete evaluation of each vehicle and groups of vehicles. The reports indicate age of equipment, miles run monthly, miles per gallon of fuel, miles per quart of oil, cost of total operation, and cost of operation of various components of the vehicle. All reports are scrutinized to insure maintenance of high mechanical standards on all equipment. CF's preventive maintenance program is guided by these reports to respond to specific maintaining needs and problem areas. The reports also guide CF's equipment and parts purchasing.

III.

TWIN TRAILERS, LOADING AND UNLOADING:

CF and industry experience in loading and unloading trailers of general commodities is that one-man assignments produce the most efficient operation. This is true regardless of the use of fork lift, hand truck, or manual techniques. A single Twin Trailer can be loaded and unloaded in approximately 1/2 the time required for a 45-foot Semi trailer. Two Twin Trailers, approximately fifty-four lineal feet of cargo capacity, can be unloaded in the same time required for one forty-five foot Semi trailer.

In 1974, over 88% of CF's total line-haul trailing fleet consisted of Twin Trailers. The lesser time required for loading and unloading of Twin Trailers reduces the time cycle not only at the time of pick-up and delivery at customers' locations but also at the origin terminal, the destination terminal, and any intermediate points at which freight transfer is necessary.

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TWIN TRAILERS AND "DIRECT" SERVICE:

Cross-dock handling is the single most costly element in transporting small shipments. Cross-dock handling and consolidation and terminal

operations are the most time consuming elements in transporting small shipments. The most efficient and least costly shipment is one which can be loaded into an over-the-road trailer at the shipper's dock and be delivered to the consignee from the same trailer. Labor and handling costs are held to a minimum as is time-in-transit.

Generally, with the exception of CF's twenty-two group terminals, no one terminal or service center location on CF's system generates sufficient traffic to each other location on the system to allow direct loading of a trailer every day to each location. CF's objective - and that of all other carriers providing general commodity service - is to bulk load small shipments to strategic break-bulk facilities (CF's Group Service Centers), where traffic flow from many terminals can be joined to fill trailers for each destination.

The shipping public demands time in-transit factors nearly equal to the minimum elapsed time which can be accomplished by direct transit from origin to destination under U.S. Department of Transportation,

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Bureau of Motor Carrier Safety, Hours of Service Rules. Shipments cannot be held for trailers to be filled up. CF competes to maintain the volumes of

traffic it handles. These volumes are necessary to provide service on all small shipments.

For example, a large shipper may improve time in-transit factors by consolidating its shipments, each weighting 2,500 pounds or more, on a private trailer or a trailer of an irregular route common carrier for transit over-the-road and distribution from that trailer in a multiple-stop in-transit distribution service. Shipments in the category of 2,500 pounds or more are essential to general commodity carrier operations in order to fill-up trailers for expedient dispatch, to avoid re-ship or break-bulk operations, and to provide expedient time in-transit. Diversion of such shipments increases time in-transit factors on all shipments handled for large and small shippers. Maintenance of adequate time in-transit factors is of great significance to CF's competing for and retaining shipments which large shippers can consolidate for distribution from over-the-road vehicles. Failure to obtain this traffic reduces CF's ratio of the heavier, over 2,500 pound, LTL shipments which are essential to expeditious movement of all small shipments. In comparison to CF's and other general commodity carriers' terminal-to-terminal service, such over-the-road multiple-stop in-transit distribution may accrue substantial partially

loaded vehicle miles, in the process of distribution of the consolidated load.

"Direct" loading and dispatch of trailers from origin area to destination area minimizes time consuming and costly freight handling in-transit and permits CF to maintain satisfactory and competitive time in-transit factors. "Direct" loading is also essential to maintaining

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cost levels which permit CF to compete for and retain traffic which may be diverted to multiple-stop in-transit distribution. Use of Twin Trailers maximizes "direct" loadings.

CF performs continual terminal-to-terminal tonnage analyses to determine average daily tonnage generated from one terminal to any other terminal in its system. From these analyses, CF establishes "direct" loads for origin-destination pair which moves 15,000 pounds per day from any origin location. Such traffic is loaded on a Twin Trailer unit at origin and moves "direct" to the destination terminal without re-handling. Far more of CF's customers, thus, receive "direct" loading service through use of Twin Trailer units than could possibly be accomplished utilizing Semis. If Semi trailer units, only, were utilized, the threshold factor for "direct" loading would be not

less than 30,000 pounds per day for each origin-destination pair.

Where sufficient volume exists in an origin city to "direct" load a Twin Trailer to a destination city, cross-dock handling is avoided at intermediate re-shipment or break-bulk locations and a direct through service is provided. If an origin city is able to generate two or three shipments amounting to 20,000 pounds to a particular destination city, it is possible to avoid not only intermediate cross dock handlings but also origin and destination terminal handlings. For such a movement, handling would occur only at the shippers' docks at the origin and at the consignees' docks at destination.

TWIN TRAILERS AND FREIGHT LOSS AND DAMAGE: Use of Twin Trailers reduces freight loss and damage. Loss and damage occurs in all freight transportation. Monetary cost is only part of the burden of loss and

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damage of shipments. The delay in procuring replacement shipments can cause costs and burdens far greater than the actual value of the shipment. For example, loss or damage to a shipment, which is to be utilized as ingredient material on specific production lines can result in costly line change-

over or shut-down, while the consignee awaits the replacement shipment.

The cardinal principle of loss and damage management in the transportation industry is that avoidance of handling avoids loss and damage. The greater the number of freight handlings, the greater the exposure to loss and damage. Significant decreases in handling will drastically reduce claims.

The ideal shipment, of course, is loaded into an over-the-road trailer at the shipper's dock and is delivered to the consignee from the same trailer. Although utilization of Twin Trailers increases the ratio of such shipments, the vast majority of CF's traffic is in small shipments, which certainly are not all susceptible to such loading.

Small shipments require some handling in order to be consolidated for over-the-road movement at the origin and destination terminal and, in many cases, at one or more intermediate terminals. Use of Twin Trailers reduces intermediate, and origin and destination shipment handlings.

For the purposes of this discussion, each shipment handling can be considered a "point of exposure" or an opportunity for loss or damage. The routine LTL shipment may have no less than six physical handlings or points of exposure, as follows:

[30]

1. A driver loads the shipment into a pick-up and delivery unit;
2. A dockman unloads the shipment from the pick-up and delivery unit to a dock cart;
3. A dockman moves the shipment from the dock cart to a line-haul trailer;
4. A dockman, at destination, removes the shipment from the line-haul trailer to a dock cart;
5. A dockman, at destination, loads the shipment into a pick-up and delivery unit; and
6. A driver unloads the shipment, delivering to the consignee.

Since Twin Trailers (singly) may be used as pick-up and delivery units and, thence, as line-haul units, their use increases CF's ability and opportunity to eliminate handlings 2, 3, 4, and 5. The use of Semis, on the other hand, generally eliminates the possibility of avoiding any of these handlings.

A "re-ship" or "break-bulk" stage automatically adds two handlings. Use of Twin Trailers permitting "direct" terminal-to-terminal operations minimizes the necessity for re-ship or break-bulk handlings. Use of Semis substantially increases the number of re-ship or break-bulk handlings necessary to provide service between points on CF's system.

CF's experience through the years has demonstrated that very little freight is damaged, lost, or stolen while securely loaded inside a trailer. Conversely, as much as 90% of all loss occurs in terminal handlings. The same is true with respect to shortages and thefts. Although hi-jackings and full truck load thefts have increased in frequency in recent years, CF has had relatively few such incidents. CF's theft losses are classified as "opportunistic." The opportunity is the exposure [31]

of freight to the thief while it is being handled. Elimination of the handling removes most of these opportunities, reduces exposure, and reduces theft losses.

If CF loaded only 45-foot Semi trailers to and from its Wisconsin terminals, CF would necessarily establish "break-bulk" patterns on a more frequent basis than required for movement of shipments in

Twin Trailers. The freight of Wisconsin shippers would be unnecessarily exposed to damage or loss due to increased handlings. It is now where CF is forced, for other reasons as previously explained, to use Semis on Wisconsin freight. Small shipment traffic to and from Wisconsin, if handled only on Semis, would be subjected to at least eight exposure points, i.e., the six previously mentioned plus additional necessary re-ship or break-bulk handlings. Shuttling single Twin Trailer units to and from Wisconsin points reduces re-ship or break-bulk operations outside of Wisconsin and may reduce the number of handlings below the six previously outlined.

TWIN TRAILERS AND CITY PICK-UP AND DELIVERY: CF performs pick-up and delivery service throughout the commercial zones and areas served by its terminals. For example, CF actually picks-up and delivers freight at businesses' and merchants' locations on Wisconsin Avenue in downtown Milwaukee and on State Street in downtown Chicago. Use of line-haul equipment to perform pick-up and delivery service avoids the cost of extra cross-dock handlings and the inherent delays in loading from city vehicles to over-the-road equipment. Use of twenty-seven foot Twin Trailers as single units for pick-up and

delivery in congested city locations is ideal, where 45-foot Semis are both difficult to maneuver [32]

and, in some cases, are restricted in their use. In addition, the size of a single line-haul Twin Trailer is not larger than the loading and unloading facility of any CF customer.

The Twin Trailer unit is better suited than any other equipment to the marketing practices of the public which general commodity carriers serve. As indicated above, the major portion of CF shipments by weight category is are [sic] under 10,000 pounds. These shipments are most expeditiously and efficiently moved in Twin Trailer units. Furthermore, shipments weighing in excess of 10,000 pounds can provide the necessary base, loaded in the nose of a Twin Trailer unit, for a daily "direct" forwarding from an origin terminal to a destination terminal in a Twin Trailer but not in a Semi trailer. Shipments loaded "direct" to destination terminal or customer facility eliminate handling cross-dock, reducing costs of operation and time in-transit.

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COMPATIBILITY OF EQUIPMENT: Single axle tractor equipment is used with Twin Trailers, both in operations as single units and in combination. Tandem axle tractors are used with Semis.

The variation in equipment limits the flexibility of CF in dispatching over-the-road schedules. For example, if fluctuations in traffic dictate a decrease in the number of schedules operating between Minneapolis and Chicago, the power equipment used on the Minneapolis-Chicago route cannot be utilized on the Minneapolis-Portland route. The former route is operated with Semis; the latter with Twin Trailers. The Wisconsin ban on Twin Trailers on Interstate Highways in Wisconsin is, of course, the only reason for using Semis on the Minneapolis-Chicago route.

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Another example is the situation in which the Detroit-Minneapolis traffic lanes suffer a decline in traffic at the same time as the Detroit-Los Angeles or Detroit-San Francisco traffic lanes experience an increase. CF is now precluded from shifting a schedule from the Detroit-Minneapolis traffic lane to meet needs on the Detroit-Los Angeles or Detroit-San Francisco lanes. The tandem axle power equipment used on the Detroit-Minneapolis

route would be incompatible with Twin Trailers operated over the other two routes.

* * *

AN EXAMPLE - 22 CRATES, WATER METERS, MILWAUKEE TO NOGALES, ARIZONA: On September 16, 1975, the Badger Meter Company ("Badger") of Milwaukee, called CF requesting pick-up service. CF's city dispatcher was advised that Badger had 9,125 pounds of water meters in 22 crates to load for Nogales, Arizona. The city dispatcher recorded the pick-up on his "direct pick-up sheet" and, using a two way radio, contacted a city driver who was delivering a shipment which had been direct loaded to a Milwaukee customer on a line-haul Twin Trailer unit from a shipper in Los Angeles. The city dispatcher instructed the driver to complete his delivery and, then, proceed to Badger Meter Company's location. The dispatcher also

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notified CF's freight operations manager that a 9,125 pound shipment for Nogales, Arizona, was being picked-up in Twin Trailer unit 29-1415.

After picking up eight other shipments, the city driver returned to the terminal at 4:15 p.m.

He was instructed to back his trailer into dock door 48 and bring his bills of lading to the dispatch office. The bills of lading were, then, encoded by a clerk to a door on the dock which corresponded to the destination of each shipment. A photocopy of each bill of lading was made. The originals were sent to the Rating and Billing Department; and the copy bills to the dock foreman.

At this point, two functions were performed simultaneously. Using the copy bills, the dock foreman instructed a dockman/checker to unload eight shipments from trailer 29-1415 at door 48 (leaving the Badger shipment on the trailer) and, following the codes on the copy bills, to move each of the eight shipments to the proper outbound loading doors. Once these shipments were unloaded, he instructed the dockman/checker to begin loading freight for Tucson, Arizona, into trailer 29-1415, behind Badger's 22 crates of water meters. The foreman gave the dockman a loading manifest, which was placed at the rear of the trailer, to record each shipment as loaded.

As this process was going on, using the original bills of lading, the office was rating, billing, and entering data into the computer for tracing, cost accounting, revenue credit, and

other management reports on each shipment loaded into and out of trailer 29-1415.

When all the Tucson freight had been loaded, the trailer was 90% full with 19,281 pounds of freight on board. Trailer 29-1415 was, then, closed and sealed. The loading manifest and all copy bills were taken

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to the dock foreman. Immediately, the dock foreman [sic] notified the terminal line-haul dispatch center that trailer 29-1415 was closed for Tucson, Arizona, with 19,281 pounds. The dock foreman [sic], then, took the manifest and copy bills to the TCON Clerk (closing clerk), in the office. The clerk entered into the computer the trailer number, trailer origin and destination, and the bill pro-number, pieces, and weight for each shipment on trailer 19-1415. A load release showing the trailer number, origin, and destination of the load was fixed to the front of a pouch containing all bills for freight loaded on the trailer. The pouch was then delivered to the line-haul dispatcher.

On September 16, Milwaukee was only able to generate one trailer load for Tucson. However, the use of the Twin Trailer unit enabled it to match trailer 29-1415 with a loaded trailer for Los Angeles, California, and to dispatch both without delay.

The Los Angeles and Tucson trailers were moved as single units from Milwaukee to CF's Illinois staging area, where they were hooked together and moved as a Twin Trailer combination over CF's authorized route to Phoenix, Arizona. Phoenix is a common point enroute to both destination cities. Through coordination by CF's Central Line-Haul Control Center, the Los Angeles trailer was matched with another Los Angeles trailer which had arrived in Phoenix from Kansas City, Missouri, two (2) hours ahead of the units generated at Milwaukee, and was dispatched as a Twin Trailer combination to Los Angeles. The Tucson trailer was matched with another Tucson trailer, which had arrived in Phoenix from Long Beach, California, only 30 minutes ahead of the Milwaukee dispatched units, and was dispatched to Tucson.

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Upon arrival at the CF terminal in Tucson, trailer 29-1415, was put into a dock for unloading. The bills were coded to city delivery routes in Tucson and 10,156 pounds of small shipment traffic was [sic] transferred for delivery to CF customers in Tucson. The 22 crates of water meters were not unloaded but were delivered in trailer 29-1415 to CF's customer in Nogales, by a connectig line carrier.

As a result of using Twin Trailers, a 9,125 pound shipment of water meters moved "direct" from a Milwaukee shipper to a Nogales customer, without reloading or rehandling and without origin or destination terminal handlings. Another 10,156 pounds of small shipment traffic moved "direct" to Tucson, without re-ship or break-bulk handling enroute. Had this freight moved in a Semi, none of the shipments would have been dispatched to Tucson on September 16; and all of the shipments would have experienced a minimum of two additional handlings in-transit.

THE BURDEN OF WISCONSIN'S TWIN TRAILER BAN ON INTERSTATE COMMERCE: The burden consists of elements which can be quantified in dollars as well as elements which cannot be quantified. The sworn testimony of R.E. Wrightson details those elements which can be quantified which include the cost burden arising out of the following elements:

- Item A: The necessity of dividing Twin Trailer combinations for operations to, from, and through Wisconsin.
- Item B: The necessity of operating Semis in lieu of Twin Trailer combinations for Madison and Milwaukee freight.

Item C: The necessity of operating Semis in lieu of Twin Trailer combinations for Minneapolis terminal freight.

Item D: The necessity of operating Twin Trailer combinations over longer mileage routes around Wisconsin rather than over shorter mileage routes through Wisconsin, on freight moving between Eastern areas and the Pacific Northwest.

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The Wisconsin ban on Twin Trailer combinations also imposes nonquantifiable burdens adversely affecting the cost of operation, and the timeliness and adequacy of service. Among these factors are:

1. Increased exposure to freight loss and damage;
2. Increased equipment incompatibility;
3. Forced extension of time for trailer loading and unloading;
4. Forced reduction in over-the-road load weight caused by the necessity to operate Twin Trailers over-the-road as single units and to operate Semis in lieu of Twin Trailer combinations;

5. Forced use of straight trucks for certain city pick-up and delivery services;
6. Forced increase of cross-dock handling at origin and destination;
7. Forced increase of re-ship or break-bulk operations; and
8. Forced use of longer routes around Wisconsin for Twin Trailer combinations.

/s/ John A. Ebeling

[Jurat]

* * *

[Exhibits Omitted in Printing]

SWORN TESTIMONY OF ANDREW N. HAPPER

Filed October 20, 1975

[Caption Omitted in Printing]

* * *

...I am employed as Research Analyst by the Middlewest Motor Freight Bureau, Inc. ("MWMFB").

* * *

[2]

During my employment by the MWMFB, I have been engaged, for the most part, in the analysis of motor carrier costs, revenue needs, and rate structures. Among my duties have been the preparation of exhibits portraying motor carrier rates, financial data, and revenue-cost relationships and their presentation to the Interstate Commerce Commission and various regulatory agencies.

IDENTIFICATION OF MWMFB: MWMFB is one of the ten major rate bureaus which publish interstate rates on behalf of motor common carriers of general commodities. MWMFB operates under approval by the Interstate Commerce Commission under Section 5b of the Interstate Commerce Act, 49 USC 5b. MWMFB publishes rates for some 1,150 common carrier members of the Bureau.

Subject to certain restrictions, MWMFB publishes rates for freight moving:

(1) Interterritorially between all points in Arkansas, Colorado, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, upper Michigan and Wisconsin;

(2) Interterritorially between points described in (1) and points in Indiana, lower Michigan, Ohio, western New York, western Pennsylvania, and West Virginia; and

(3) Interterritorially between points described in (1) and (2), on the one hand, and, on the other, points in Alaska and Canada.

MWMFB publishes all the rates and charges for its member carriers for operations within and between the above described territories in some 57 tariffs.

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While the operations of the principal motor carrier rate bureaus differ slightly, basically they all operate in the same manner. I am thoroughly familiar with the operations of MWMFB and will reflect upon its operations.

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CARRIER OPERATING COSTS DETERMINE THE BASIC RATE LEVEL: One of the principal activities of MWMFB, as well as other rate bureaus, is the preparation and oral presentation to the Interstate Commerce Commission of evidence in

justification of general increases in motor common carrier rates. Broadly speaking, I would identify two basic reasons which underlie the carriers' need for general rate increases. First are the wage and benefit increases which the carriers and labor negotiate under the terms of governing contracts between the carriers and the International Brotherhood of Teamsters. Second is the effect of inflation, particularly in recent years, upon the non-labor expense items involved in carrier operations. Labor and labor related expenses constitute approximately 66% of the general commodity carriers' operating expenses, while non-labor comprises approximately 34%.

The evidence required by the Interstate Commerce Commission in justification of general increases was not specified until 1964, when the Commission began issuing a series of orders requiring the submission of traffic and cost studies covering the same group of representative carriers and the same time period. The series of order began with LTL COR Rates East and Territories West, 326 ICC 174. Finally, in 1971, the Commission issued an order in Ex Parte No. MC-82, New Procedures in Motor Carrier Revenue Proceedings, 339 ICC 324 and 340 ICC 1.

In MC-82, the Commission set out specific evidence which must be submitted by the various bureaus in justification of proposed increases.

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Under MC-82, each rate bureau proposing an increase must submit a revenue-expense analysis on its "issue traffic." In preparing a justification for a general increase, MWMFB, as other rate bureaus, applies the Highway Form B formula to determine the total expense for each of the four units of service. These totals are then divided by the service units performed, to arrive at the unit cost. These unit costs are applied to the service units reflected in the traffic study. Thus, a cost for each shipment in the traffic study can be determined. Division of the shipment cost by the revenue earned on each shipment produces a revenue-expense analysis, which is stated as an operating ratio.

ADDED COSTS OF WISCONSIN'S TWIN TRAILER BAN INCREASE SHIPPING COSTS OF NON-WISCONSIN SHIPPERS: Rates to and from points in Wisconsin are published by six of the ten principal motor carrier rate bureaus. These include Central and Southern Motor Freight Traffic

Association, Inc.; Central States Motor Freight Bureau, Inc.; Eastern Central Motor Carriers Association, Inc.; Midwest Motor Freight Bureau, Inc.; Rocky Mountain Motor Tariff Bureau, Inc.; and Southern Motor Carriers' Rate Conference.

The revenue-expense analyses required under MC-82 submitted by each of the six bureaus are based on the total operating expenses of each of the carriers participating in the Bureau's cost and traffic study. No adjustments are made for specific operating conditions or circumstances which require a greater or lesser than average expense for a specific locality.

Consolidated Freightways Corporation of Delaware ("CF") participates in the rates of all six of these bureaus. For calendar year 1974, CF's participation in these six bureaus was as follows:

[12]

Central States	\$ 10,331,156
Eastern Central	\$ 87,921,118
Midwest	\$ 41,367,141
Rocky Mountain	\$224,685,648
Southern Motor	\$ 17,346,139

* * *

This study [from R.E. Wrightson's Sworn Testimony] indicates that CF incurred added costs of operation as a result of Wisconsin's ban on the use of Twin Trailers on Interstate Highways in Wisconsin. The projected annual cost burden, for example, \$2,050,081, for the year 1975, annualized, will be reflected in the total operating expenses of CF and will be prorated throughout the system traffic of CF in the revenue-expense analyses used for rate making purposes. To the extent that these expenses have been incurred in past years, the prevailing rate structures of all six bureaus reflect the added costs of the Wisconsin Twin Trailer ban. These costs cannot be applied solely to the

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costs incurred on shipments moving to or from points in the State of Wisconsin. These added costs will be applied to all shipments handled by CF.

Any attempt to isolate the added costs and apply them only to shipments moving to or from points in Wisconsin would be impossible to accomplish with any degree of accuracy. It is my opinion that it is not possible to isolate these added

costs. The magnitude of the problem of attempting to apportion the added Wisconsin costs only to Wisconsin traffic is clearly demonstrated by CF's extensive participation in the rates of six different bureaus. Only a small portion of the amounts shown, above, reflecting CF's participation in each bureau was earned from shipments moving to or from points in Wisconsin. Of the amounts earned by CF on shipments moving to or from Wisconsin points, a portion was earned for shipments moving in joint-line service with other carriers. The joint-line operations could have occurred either within or without the State of Wisconsin. In such cases, cost apportionment would be a practical impossibility.

In addition, as the result of shifts in traffic, apportionment of added costs such as those incurred by CF on traffic moving to and from Wisconsin, based on a prior year's traffic study, could be totally inaccurate at the time of publication of a general increase. The entire rate structure of general commodity carriers is predicated upon an effort to establish a transportation system. The standardized approach to justification of motor carrier general increases, which establishes a general level of common motor carrier rates, cannot allocate

[14]

the cost of the Wisconsin twin trailer ban to traffic moving solely to, from, or through Wisconsin. The end result is that the added cost to CF must be applied as a system burden and will be allocated to every segment of CF's traffic. Thus, shippers in every section of the country will be required to assume the added cost burden of the Wisconsin twin trailer ban, since the added costs become a part of costs upon which the rates and charges of MWMFB and five other major rate bureaus are based.

In my opinion, the system of common carrier rate making is an essential part of the National Transportation Policy, as set forth in the Interstate Commerce Act, enacted as a part of the Transportation Act of 1940, calling for a "national transportation system." Under this sytem [sic], there is no conceivable means to avoid the extra-territorial effect of the added cost attributed to Wisconsin's ban on Twin Trailer operation on Interstate Highways in Wisconsin.

/s/ Andrew N. Happer

[Jurat]

* * *

SWORN TESTIMONY OF ARNOLD J. FOSLIEN

Filed October 20, 1975

[Caption Omitted in Printing]

* * *

I have been employed by Raymond Motor Transportation, Inc. ("Raymond") since August of 1945. I was initially hired as Safety and Personnel Director. My current position is Vice President for Public Relations, Safety, Insurance and Personnel.

* * *

[3]

IDENTIFICATION OF
RAYMOND MOTOR TRANSPORTATION, INC.

Raymond Motor Transportation, Inc., is a Minnesota corporation with its principal place of business at 1912 Broadway Street N.E., Minneapolis, Minnesota. Raymond is not a large common carrier, but it is the second oldest common carrier in the State of Minnesota. Raymond has various interstate route authorities which stretch the [sic] from the eastern border of North Dakota to and including Chicago Commercial Zone, plus other

points in the Illinois counties of Lake, De Kalb, Kane, DuPage, Cook, Kendall, Will, and McHenry. The Chicago Commercial

[4]

Zone includes portions of the above Illinois counties, and certain points in the State of Indiana. In addition thereto, Raymond has intrastate authority for carrying general commodities in a large portion of the State of Minnesota and limited portions of Illinois. Copies of Raymond's interstate authorities are attached hereto as "Appendix A". [Omitted in Printing] As a common carrier, Raymond has the opportunity and obligation to serve numerous communities. A map and list of points served by Raymond and the location of its terminals is attached hereto as "Appendix B". [Omitted in Printing]. As can be observed from reviewing "Appendix B", Raymond provides direct service to numerous small communities. Many of these towns and their citizens depend solely upon Raymond and other trucking firms to give them access to markets for their products and to provide them with access to merchandise produced in other areas. The general commodities shipped by Raymond include an array of products which are used by every person in his daily life. They include perishable foods, materials and supplies

used by the United States Department of Defense, manufactured goods, household appliances [sic], raw and processed agricultural [sic] and forest products, building materials, clothing, bassinets, coffins, paper, printed matter, and hospital supplies. Many of these communities [5]

have been long abandoned by the railroads, and it should also be noted that the railroads, for the most part, no longer accept less than car load shipments.

Shipments to and from these points are generally in small quantities. Indeed, a review of our most recent records shows that from January 1, 1975, through September 5, 1975, Raymond shipments by weight are as follows:

WEIGHT OF INDIVIDUAL SHIPMENTS

	Less than 500#	500-1999#	2000-9999#	Over 10,000#
# of shipments	132,849	38,064	11,617	3,396
% of total	71.5%	20.5%	6.2%	1.8%
% of wgt. shipped	11.1%	18.2%	23.4%	47.3%
% of revenue	25.4%	25.4%	24.3%	23.6%

In the trucking industry, shipments of over 10,000 pounds are considered to be truck loads. From a review of the above chart, it is clear that 98.2% of the shipments transferred by Raymond in the first nine periods of 1975 were less than truck load shipments. Moreover, while 71.5% of the shipments weighed less than 500 pounds, those shipments represented only 11.1% of the total

[6]

weight shipped and only 25.4% of the total revenue received by the trucking firm. On the other hand while 1.8% of the shipments weighed more than 10,000 pounds, those shipments represented 47.3% of the weight shipped and 23.6% of Raymond's total revenue. These facts have particular significance with respect to the advantages that twin trailers provide to Raymond and the shipping public, which advantages are denied by the Wisconsin ban on twin trailers as is discussed below.

Raymond has no intrastate authority in Wisconsin, but it is authorized to travel through Wisconsin on its interstate operation between Minnesota and Illinois. This authority was granted pursuant to Certificate of Public Convenience No. MC66788 Sub 18 by the Interstate Commerce Commission.

* * *

[7]

Raymond conducts no transportation business in the State of Wisconsin. Its only contact with Wisconsin is the passage of its vehicles through the state on Interstates 90 and 94 enroute between Minnesota and Illinois. Raymond has no terminals in Wisconsin, and its vehicles' only stops in the State of Wisconsin are for eating and for fuel and equipment checks at truck stops adjacent to the freeway at New Lisbon and Stoughton, Wisconsin.

The run between Minneapolis and Chicago takes approximately 10 hours including time for pre- and post-operating inspections of the equipment by the drivers, and equipment, lunch or coffee stops. Raymond has tire banks at both New Lisbon and Stoughton, Wisconsin.

SAFETY

We are very concerned with human safety at Raymond and our excellent safety record evidences that concern. We are, of course, required to meet numerous safety standards promulgated by various governmental agencies. These agencies include the United States Department of Transportation, Bureau of Motor Carrier Safety; the United States Department of Labor, Occupational Safety and Health Administration; and the regu-

[8]

lators in each state, as well as local governments.

We provide extensive training on safety for our drivers and other employees. Each of our drivers must have a physical before being employed by us as well as at least every two years thereafter. In the event that a driver has any particular physical problems, he must have additional physicals as often as medical advice deems necessary. We keep a close watch on each driver's safety and accident record. When necessary, we discipline our drivers, up to the point of discharge if a driver shows a disregard of safety and the rights of others.

We also keep close watch on the maintenance of our equipment. All tractors and trailers are checked continually. The driver inspects his tractor and trailer before operating it and also after completing his run. In addition, before a new driver operates the tractor and trailer, the maintenance people inspect them.

* * *

[9]

While we are always attempting to improve

[10]

safety conditions, we are pleased with the accident record of our drivers. We have a strict company policy that drivers must make an accident report on any incident whatever its significance.

We began using twin trailers in the State of Minnesota and in the bordering city of Fargo, North Dakota, on July 6, 1973. By July 31, 1975, the twin trailer combinations had traveled nearly 1.5 million miles, and we have not had a single collision with them.

* * *

[11]

Use of twin trailer combinations in our over-the-road operations has been limited to the State of Minnesota and the City of Fargo, North Dakota. We use twins singly in Minneapolis and St. Paul to pick up and deliver freight. Similarly, in Illinois we use twins individually for the pick up and delivery of freight. Our primary use of the twins in combination is to carry freight between the Minneapolis terminal and points in out-state Minnesota and Fargo, North Dakota, where their use is permitted. "Out-state Minnesota" refers to those portions of the state which we serve other than the Minneapolis-St. Paul metropolitan area.

This service area is primarily west and north of the metropolitan area. Some of the larger communities in out-state Minnesota where we utilize twin trailer combinations are St. Cloud, Fergus Falls, Alexandria, Moorhead, Little Falls, Long Prairie, Sauk Center and Glenwood.

One of the greatest advantages of twin trailer [12] combinations to Raymond is that we are able to peddle freight off these units in outlying cities. We often load 27-foot trailers at our Minneapolis terminal for distribution of the freight directly off the 27-footers in many of the communities named in the previous paragraph and at various smaller towns located nearby, without having to unload and reload at a terminal in any of the respective communities. In addition, we are often able to drop off one of the 27-foot trailers at our terminals in these outlying communities for unloading and handling of small deliveries, and, at the same time, directly deliver the larger loads off the other 27-footer to consignees in the same area without running that freight over the dock at such points. Previous to our introduction of twin trailers in Minnesota, we were not able to avoid such handling in as many instances.

The avoidance of handling saves us the expense and extensive time involved in unloading the trailers and then sorting and reloading on to other trailers for delivery to consignees. The amount of time involved in unloading and reloading freight, of course, varies with the type of freight involved. However, it is not uncommon for a 40-foot trailer holding 30,000 pounds of less-than-truck-load freight to require 10 man hours of labor to unload, sort and reload. Our current wages to [13]

dock hands, including fringe benefits, are approximately \$9.80 per hour. Thus, it can be seen that unloading and reloading is very expensive to a trucking firm. It can amount to over \$90.00 per 40-foot trailer. Furthermore, by avoiding such handling, we are able to provide consignees with faster delivery and reduce the opportunity for damage, misshipment and pilferage losses to occur. Damage, misshipment and pilferage losses increase with the number of handlings that are involved.

Even though the use of twin trailer combinations in Minnesota is generally restricted to four-lane highways and certain designated two-lane highways which provide access to and egress from four-lane highways, we are able to use twin trailers to our advantage in serving many of our

points which are accessible only by two-lane highways. We are able to hook together two 27-foot trailers at our Minneapolis terminal for delivery to towns in out-state Minnesota which are located in close proximity to one another. When the twin combination reaches the end of the four-lane highway, the twins are split at our terminals, and the two 27-foot trailers are then hauled separately to their respective destinations.

For example, twin combinations are often driven to Little Falls where the back trailer is dropped at our terminal there, and the tractor and front trailer proceed

[14]

another 30 miles north to Brainerd, Minnesota. Our local cartage operator in Little Falls can then hook its tractor to the back trailer and deliver the freight in that area. In the meantime, the tractor which has proceeded to Brainerd with the front trailer will drop that trailer off in Brainerd, and hook on another single twin trailer which has been loaded with freight for Minneapolis or Chicago. This tractor and single 27-foot trailer will then return to Little Falls and hook on a second twin trailer loaded with freight for Minneapolis or Chicago. The twin combinations will then travel from Little Falls to the Minneapolis terminal. At

the Minneapolis terminal, the twins are either split and unloaded, or if possible, the freight may be peddled off the trailers individually to various consignees in the the [sic] Minneapolis area.

The twins are also used in this manner where twin trailers are bound for: Long Prairie and Wadena; Glenwood and Morris; Fergus Falls and Breckenridge, Wahpeton or Pelican Rapids. The advantage of being able to split the trailers in this manner is that the delay inherent in having a truck and driver sit at a point of first destination to be unloaded before proceeding to the second point is avoided.

* * *

[16]

The fact that 27-foot trailers hold less freight individually permits us now to provide those cities which we can serve by twin trailers with more rapid service as we do not have to wait for the additional freight before the trailers are full.

BURDENS OF THE WISCONSIN PROHIBITION AGAINST TWIN TRAILERS

The Wisconsin prohibition against twin trailer combinations poses a number of heavy burdens on Raymond's operations. This is true because while

Raymond is permitted to use twin trailers in Minnesota, Illinois and those portions of North Dakota which it serves, they are not able to use them through the State of Wisconsin. A significant portion of our business is between the Chicago Commercial Zone and points in Minnesota, and also Fargo, North Dakota. Because of the Wisconsin prohibition, we are unable to utilize our twin trailers between points in Minnesota and North Dakota and Illinois. These units are our most efficient equipment and the inability to employ them in Wisconsin costs us and our customers dearly. The cost is in dollars for Raymond and in dollars, [17]

service and market access for Raymond's customers.

Because of the Wisconsin prohibition, it is necessary for Raymond to make more trips through Wisconsin than would be necessary if twin trailer combinations were permitted. At the present time, we are using 40-foot trailers with tandem tractors in our operations through Wisconsin between Minneapolis and Chicago. If we were permitted to use our twin 27-foot trailer combinations between Minneapolis and Chicago through Wisconsin, we would be able to reduce our number of trips significantly. This is true because in the business

of transporting general commodities, in which we engage throughout our system, the important factor is cubic capacity. Most general commodities shipped are of low density. Only occasionally, in hauling these general commodities, do our trailers approach the weight limits. Indeed, for the period January 1, 1975 to September 5, 1975, our records show that even though gross weight regulations (73,280 pounds) allow for a payload of approximately 42,000 pounds, our average payload was 24,789 pounds.

The difference in the hauling capacity of the twin 27-foot trailer combinations and the 40-foot semi-trailers is approximately one-third. The twins and 40-foot trailers are of the same height and width, but the variance is in their length. There are approximately 39

[18]

1/2 feet of usable lineal space in a 40-footer and approximately 53 feet of usable lineal space in a twin combination. Thus, the cubic capacity of the twin combinations is about 34% greater than the 40-foot trailers. This being the case, under optimal conditions, three twin trailer combinations can carry what it would take four 40-foot semi-trailers to carry.

Raymond averages approximately 12 trips per day, each way, between Minneapolis and Chicago through Wisconsin. We operate on a 5-day week, and the average number of trips on a weekly basis is 60 each way of a total of 120. Thus, if the optimal conditions were reached and we were running twins instead of 40-foot trailers between Minneapolis and Chicago, we would be able to reduce our total of 120 trips per week by 30 trips per week. It would take only 90 trips in the twins to carry the same amount of freight as is currently being carried by the 40-footers.

While it is possible that we would be able to reduce our total number of trips between Minneapolis and Chicago on a weekly basis by 30 through the use of twin trailer combinations instead of 40-foot semi-trailers, as a practical matter, it is likely that the full number could not be reduced and that we would continue to use some 40-foot semi-trailers. This is true because on some

[19]

occasions, articles longer than 27-feet are hauled by Raymond, and in some instances, a shipper might require a 40-footer be used to haul his freight. Moreover, on rare occasions, extremely dense freight is hauled, and due to weight limitations, we could not take advantage of the additional cubic capacity which twins afford.

* * *

[20]

A number of savings would result from the use of twin trailer combinations between Chicago and Minneapolis. These potential savings include a reduction in fuel costs, labor costs, damage, misshipment and pilferage costs, accident costs, and capital costs. In addition, we would be able to provide faster shipping service to our customers.

The applicable records maintained by Raymond reveal that our experience with twin combinations and 40-foot semi-trailers is that the tractors hauling them consume approximately the same amount of fuel -- 4.6 miles/gallon. While I am not a physicist or mechanical engineer, I understand that the reason the mileage is the same despite the fact that twins can carry more cargo is that the tractors used for hauling 40-foot trailers have two power axles and the tractors used for hauling twins have a single power axle. I understand the second power axle on tractors hauling 40-footers creates additional resistance and requires additional horsepower for its operation.

I estimate that on an annual basis it would be possible for Raymond to save \$63,180.00 on fuel costs if

[21]

we were permitted to use twin trailers between Minneapolis and Chicago. I have attached hereto "Appendix F" [Omitted in Printing] which was prepared under my supervision and direction and provides the basis for my estimation of the fuel savings. This estimate assumes that only twins would be used on our route between Minneapolis and Chicago and therefore represents the optimal use of twin trailers. This savings, as a practical matter, would be reduced by the continued use of some 40-foot semi-trailers between Minneapolis and Chicago.

Not only would Raymond benefit from the reduction in fuel costs, but also shippers using Raymond and the general public would ultimately benefit from the lower fuel costs. This is true because the rates or tariffs common carriers may charge are based in large part upon their costs.

The use of less fuel by Raymond would also be beneficial to the general public as a matter of fuel conservation and reduction of air pollution. In addition, if fewer vehicles are used on the road by Raymond and other trucking firms, noise pollution which might result from the operation of such vehicles would also be reduced.

Raymond would also be able to reduce its labor costs if twins could be used through Wisconsin on Ray-

[22]

mond's route between Minneapolis and Chicago. First, with fewer trips, our labor costs for drivers on that route would be reduced. Second, our labor costs for dock handling would also be reduced because of the reduction in loading and unloading that is afforded by the flexibility of twin trailers.

* * *

Despite the fact that the introduction of twins does to a certain degree provide savings in manpower, it should be noted that the Minnesota Teamsters United Council No. 32, representing all of the Teamster locals in Minnesota, has supported the utilization of twins in Minnesota. Attached hereto as "Appendix H" [Omitted in Printing] is a copy of

[23]

an article which appeared in the February 15, 1973, edition of the "Minnesota Teamster" in which the Teamster position on twin trailers is set forth. The Teamsters represent our Minnesota drivers and freight handlers. They recognize that twins are

more practical and efficient and will improve trucking operations, and will create additional opportunities for their members in the future:

* * *

[25]

Raymond's current Minnesota operations are also significantly hampered by the prohibition against twin trailer combinations by the State of Wisconsin. We use our 27-foot twin trailer combinations extensively in out-state Minnesota. When we use our twin combinations to pick up freight in out-state Minnesota which is destined for Chicago, it is now necessary to unload in Minneapolis and then transfer the freight to 40-foot trailers in

[26]

order to pass through the State of Wisconsin. This often happens with freezers and refrigerators we ship for Franklin Manufacturing which is located in St. Cloud, Minnesota. We incur similar problems with the shipping of assembled kitchen cabinets for Medallion Kitchens which is located in Fergus Falls, Minnesota. Not only do we incur the additional costs and delay of being required to unload and reload the freight at our terminal in Minneapolis, which costs and delay could be avoided if twin

trailer combinations were permitted to be used through the State of Wisconsin, but also additional dock space is necessary which would not be required if this handling could be avoided. Furthermore, moving freezers, refrigerators [sic] and kitchen cabinets cross-dock is not only costly but also often involves hard physical labor which could easily be avoided but for the Wisconsin ban on twin trailers on the Interstate Highways in Wisconsin. The increase in handling which the Wisconsin prohibition of twin trailer combinations necessitates also hampers Raymond's efforts to reduce its damage, misshipment and pilferage losses. These losses occur primarily during dock handling. If we could use twins through Wisconsin, we would be able to reduce our dock handling and hopefully these losses.

Futhermore, with respect to tractor and trailer accident losses, such losses vary with the number of trips and the total mileage. We could expect that by using twins between Minneapolis and Chicago through the State of Wisconsin our exposure and hence accident losses on that route would be reduced. Similarly, with the reduction in the number of miles traveled, we would also probably be entitled to a reduction in our insurance premiums.

[27]

Finally, it would seem very possible that Raymond would be able to reduce its capital investment in trailers if it were not for the Wisconsin prohibition of twin trailer combinations. The reduction in handling which twins afford should reduce the number of trailers sitting idle at loading docks, and we would be able to more efficiently employ our equipment.

My testimony is directed to Raymond's situation, but if the Wisconsin ban against twin trailer combinations were lifted, numerous other motor carriers would also benefit. In turn, shippers would benefit from lower rates and ultimately, the general public would benefit as well by being able to purchase goods that have been shipped at a lesser price than would be the case if the shipping costs were higher.

/s/ Arnold J. Foslien

[Jurat]

* * *

IN THE
SUPREME COURT OF THE UNITED STATES

No. 76-558

Supreme Court, U. S.

FILED

JAN 24 1977

MICHAEL RODAK, JR., CLERK

RAYMOND MOTOR TRANSPORTATION, INC.
a Minnesota Corporation,
and

CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE, a Delaware Corporation,
Appellants,

v.

ZEL S. RICE, ROBERT T. HUBER,
JOSEPH SWEDA, REBECCA YOUNG,
WAYNE VOLK, LEWIS V. VERSNIK,
and BRONSON C. LA FOLLETTE,
Appellees.

2/25/77
L3, 51

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN

MOTION TO DISMISS

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IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

RAYMOND MOTOR TRANSPORTATION, INC.
a Minnesota Corporation,
and
CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE, a Delaware Corporation,
Appellants,

v.

ZEL S. RICE, ROBERT T. HUBER,
JOSEPH SWEDA, REBECCA YOUNG,
WAYNE VOLK, LEWIS V. VERSNIK,
and BRONSON C. LA FOLLETTE,
Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN

MOTION TO DISMISS

The appellees move this Court to dismiss the above-captioned appeal for the lack of a substantial federal question.

QUESTIONS PRESENTED

Does Wisconsin's refusal to permit twin trailers on the Interstate Highways in Wisconsin violate the Commerce Clause by placing a burden on interstate commerce which outweighs any legitimate local interest?

Does the Wisconsin regulatory scheme for vehicles unconstitutionally discriminate against interstate commerce?

STATEMENT OF THE CASE

Wisconsin highways are filled with motor vehicles which range in size from the smallest automobiles to the largest trucks and trailers. In the interest of traffic safety, Wisconsin has placed limits on the size of such vehicles. The width, height, length and weight of vehicles are regulated by ch. 348, Stats. Subject to certain exceptions to be hereinafter discussed, sec. 348.07, Stats., limits the length of single vehicles to 35 feet and combinations of 2 vehicles to 55 feet. The legislature has refused to increase this 55 foot limit to 65 feet. Section 348.27(6), Stats., authorizes the Highway Commission to permit the operation of trailer trains up to 100 feet long. An example of this would be the long trains of refuse wagons in use at one time in the City of Milwaukee. Because of the obvious dangers of such lengthy vehicles the Highway Commission has chosen to make very limited use of this power. In fact, that Commission has, by rule, limited such permits to vehicles hauling municipal refuse, and unloaded vehicles in transit from the manufacturer or dealer to the purchaser or dealer, or for the purpose of repair. Wis. Adm. Code section Hy 30.14(3)(a).

The appellants made application to the Highway Commission under this rule for permits to operate 65 foot twin trailer units on certain Wisconsin highways. The permits were denied because such operation is not within the language of the rule. The Highway Commission has not changed this rule because the legislature has indicated it does not favor the change. The legislature has not changed the law to conform with the wishes of the trucking industry because the people of the state have made it clear that they do not want any more longer trucks on the highways. (Huber deposition, pp. 26-29)

In other instances in the past the legislature has yielded

to the pressure of the trucking industry and has enacted a number of exceptions permitting larger size vehicles and loads. Examples are the transportation of long poles, pipes, and girders, permits for industrial interplant and plant to state line operations, mobile home permits, pulpwood permits, and auto carrier permits. Now the trucking industry, as represented by these appellants, comes into court saying that because the legislature and the Highway Commission made exceptions for these others, they now are duty bound to make a further exception for 65 foot twin trailers regardless of the commodity hauled. It is contended that failure to make further exceptions for the benefit of these appellants constitutes a denial of equal protection of the laws and an undue burden on interstate commerce. They now ask the court to impose upon Wisconsin highways more long trucks, against the will of the legislature, the Highway Commission, and the people of this state.

ARGUMENT

I. No Substantial Federal Question Is Presented.

A. Refusal to allow 65 foot twin trailers is not a denial of equal protection of the laws.

1. There is no direct discrimination against interstate commerce as such.

The appellants recognize that the statutes and administrative rules here challenged are presumed to be constitutional, and that they have the burden of overcoming this presumption beyond a reasonable doubt. They have presented voluminous evidence to show that 65

foot twin trailers have a good safety record and to show that Wisconsin's refusal to allow such trailers on its highways increases the cost of their interstate movements. They point out that the law is clear that a state may not discriminate against interstate commerce in favor of local commerce. Of course, we agree. Then they say we do discriminate directly against interstate commerce and that this places upon us the burden of showing a compelling state interest to justify such discrimination. They say that we have not met this burden and thus, they have shown an undue burden upon interstate commerce. All of these conclusions depend on an initial determination as to whether we do discriminate against interstate commerce as such. In this section of the brief we will demonstrate that there is no direct discrimination against interstate commerce.

In this respect, it will be helpful to examine the specific discriminations complained of to see if they are aimed directly at interstate commerce as such.

Under sec. 348.27(5), Stats., special permits can be obtained for hauling overlength poles, pipes and girders. Nothing in this statute indicates that such permits are available for intrastate commerce only. Such permits are, in fact, available regardless of whether the move will be intrastate or interstate. Appellants have made no showing that the Highway Commission discriminates against interstate commerce in this regard.

Under the same statute permits are issued for auto carrier haulways transporting automobiles both in intrastate and interstate commerce. Nothing in the statute or in the practice of the Highway Commission results in a discrimination against interstate commerce and in favor of intrastate commerce in this regard.

Section 348.27(7), Stats., authorizes mobile home permits for transporting mobile homes in this state. Nothing in the statute requires, or in the practice of the Highway Commission results in, discrimination against interstate commerce. Such permits are freely given to transport mobile homes within the state, and from this state to points outside the state, and from points outside the state to points inside the state. Appellants have not shown that interstate commerce in mobile homes is discriminated against.

Under sec. 348.27(9), Stats., the Highway Commission can issue overlength permits for the transportation of poles and pulpwood for a distance not to exceed three miles from the Michigan-Wisconsin state line. This was a concession to the trucking companies which haul poles and pulpwood to a pulpwood plant at Niagara, Wisconsin. As to any of these loads which originate in Michigan, it was necessary to have a Wisconsin permit so that the longer loads permitted in Michigan could be hauled all the way to the Wisconsin plant. This is, of course, a direct discrimination in favor of interstate movements from Michigan to Wisconsin. This statute would not authorize a permit for an overlength load of pulpwood from a point in Wisconsin located farther than three miles from the Wisconsin-Michigan line. Thus, there is, in fact, a discrimination against intrastate commerce.

Under sec. 348.27(8), Stats., and Wis. Adm. Code section Hy 30.14(3)(a), trailer train permits may be issued for hauling municipal refuse and for the interstate or intrastate operation of empty vehicles in transit from manufacturer or dealer to purchaser or dealer or for the purpose of repair. As to that part of this rule applicable to empty vehicles, the rule specifically states that it applies to interstate commerce. In fact, most of such moves would be interstate in nature. As to municipal waste, nothing in the

statute, rule, or practice of the Highway Commission indicates that this does not apply to interstate commerce as well as intrastate commerce.

Section 348.27(4), Stats., authorizes permits for the operation of oversize vehicles in connection with interplant, and from plant to state line operations in this state. As to the interplant operation within the state, it is by its very nature, only an intrastate movement. This has no bearing on interstate commerce. As to the operation from a Wisconsin plant to the state line, this is, in fact, an interstate movement. Thus, a permit for such movement is in no sense a discrimination against interstate commerce. Appellants have pointed out that we will not grant a permit for interplant movement from a plant located outside the state to a plant located inside the state. Regardless of whether the court would think this is a significant discrimination against interstate commerce, it is clear that appellants have no standing to raise this question because it does not directly affect their rights. The only person who could raise such question would be a person with a plant in Illinois, for example, who applied for an interplant permit to haul from his Illinois plant to his plant in Wisconsin. Appellants do not fall into this category. Thus, it is clear that they are trying to raise a constitutional question on a point which affects the rights of others. The law is clear that a party must try his own case and may not urge the unconstitutionality of a statute on a point not affecting his rights. A party may not challenge the constitutionality of a statute on the ground that it may be applied unconstitutionally to others. *Broadrick v. Oklahoma*, 413 U.S. 601 (1973); *Dombrowski v. Pfister*, 380 U.S. 479 (1965); *Scharping v. Johnson*, 32 Wis. 2d 383, 145 N.W. 2d 691 (1966).

Thus, it is clear that there is in the statutes, rules, and practices complained of no discrimination aimed directly at interstate commerce as such.

2. The differences in treatment complained of are based upon reasonable classifications which are permissible under the equal protection clause.

Appellants admit that, if there is no discrimination directly against interstate commerce as such, then they have the burden of showing the classifications are arbitrary, capricious, and without rational basis. Classifications must rest on some ground of difference having a fair and substantial relation to the object of the legislation. They also say that the possible public interests here to be served are highway safety, preservation of the roads, and promotion of efficient transportation, and that any classification made by the state must bear a fair and substantial relationship to these purposes. With this we agree, except that the statement of these purposes is too restrictive. The law is full of illustrations where the police power, as well as the tax power, is exercised in such a way as to benefit a group of persons or industries. The law is clear that, as long as such differences of treatment bear a fair and substantial relationship to a permissible public purpose, there is no denial of equal protection. In this respect we differ with the appellants as to what constitutes a permissible public purpose for the exercise of the police power. Special privileges extended through the exercise of the police power to agriculture, labor, small business, the indigent, and veterans, for example, are commonplace in our society. One would not be surprised to find special police power concessions to orange growers in Florida, cotton growers in Louisiana, auto manufacturers in Michigan, dairy farmers in Wisconsin, grain in Montana, lumber in Oregon, and grapes and lettuce in California. It is clear that the promotion of such interests is in the public interest and a proper public purpose.

Many cases have sustained the validity of favored treatment of farmers as against a charge of denial of equal protection. In *Northern Wis. Co-operative Tobacco Pool v. Bekkedal*, 182 Wis. 571, 197 N.W. 936 (1924), the court upheld the co-operative marketing law as a proper exemption given to farmers, which did not constitute a denial of equal protection. In *Wis. Truck Owners Assn. v. P.S.C.*, 207 Wis. 664, 242 N.W. 668 (1932), the court upheld a ton-mile tax law exemption of motor vehicles used or operated exclusively in transporting dairy or other farm products, as against a charge of denial of equal protection. In *State v. Wetzel*, 208 Wis. 603, 243 N.W. 768 (1932), the court upheld the exemption of implements of husbandry from length restrictions applicable to other vehicles on the highway, as against an equal protection challenge.

In *Oregon v. Pyle*, 226 Or. 485, 360 P. 2d 626 (1961), a statute allowed heavier axle weights for trucks hauling logs, poles or piling than for trucks hauling other products. It was there argued that no valid distinction can be drawn on the basis of the nature of the load because an overload of logs will cause as much damage to the highway as an overload of any other commodity. The court pointed out that protection of the highway is only one of the purposes of the statute. The court found that another purpose of the statute was to benefit the logging industry. The court concluded that such special treatment afforded the haulers of logs, poles, or piling can be justified on the ground that the legislature desired to foster the logging industry through special benefits afforded to those hauling the raw products of the forests. The lumbering business is one of the principal businesses of the state, on which a large part of the population is dependent, and the state is interested in encouraging and developing this industry. It is within the power of the legislature to grant special benefits to one branch of industry in order to promote the public good. The court found the classification reasonable and that it did not

violate the equal protection clause. The similarities between this case and the one presently before this court are apparent. There the argument was made that an overload of logs damages the road as much as an overload of any other commodity and, therefore, the classification was improper and not related to a proper public purpose of protecting the road. Nevertheless, the court found another public purpose to promote the logging industry. This was enough to save the classification. In the case presently before this court the appellants argue that classifications in the Wisconsin law benefit local industry such as pulpwood, pole and pipe transportation, mobile homes, automobile manufacture, and others, by allowing them to haul loads longer than 55 feet while restricting the haulers of other general commodities to a maximum length of 55 feet. Since a 65 foot truck hauling one product is as safe or dangerous on the highway as a 65 foot truck hauling another product, appellants argue that the restriction they face bears no reasonable relation to highway safety and is, therefore, unreasonable, arbitrary, and constitutes improper classification. In making such argument they ignore the fact that the promotion of local industry is in the public interest and a proper public purpose.

A good example of this is the mobile home industry. Mobile homes are a principal source of low cost housing for low income families. They cannot be moved by railroad for several reasons including the fact that the rails do not run up to the mobile home parks and other locations where they are to be delivered. If low income families are to be allowed the advantage of this source of low cost housing some way has to be found to move mobile homes on the highways. Nobody wants them on the highways. They are too wide and too long, and move too slowly. They crowd the centerline or run on the shoulder on curves. They tip over easily. They are a nuisance and a danger on the highway. We do not permit them on the highway because they are

safe. We permit them on the highway because there is a great public need for them and we restrict this movement to avoid as much danger as possible.

Another good example is the hauling of long poles upon the highway. Telephone and power line poles have to be of a substantial length to be useful. They can't be cut in half and reconnected at the site where they are to be set in the ground. They have to be transported by highway because in most instances they are set within the highway right of way. They are not allowed to be hauled upon the highway because they are so safe. Such hauling is tolerated on the highway because it is a practical necessity and serves the public interest. In this respect appellants seem to be saying that because their vehicles are safer than mobile homes and long poles, Wisconsin is duty bound to permit them upon its highways.

Appellants suggest that the statute permitting 65 foot auto carrier haulways was enacted because Wisconsin desires to promote its auto industry. If this were true, the law is clear that the police power can be exercised in such a way as to promote certain industries and that this is a proper public purpose. It is more likely, however, that the extra length for auto carriers was authorized for the benefit of that part of the trucking industry which hauls automobiles, in order to help that struggling industry remain in business against the growing competition of the railroads which threaten to take such business away from the truckers. Here again the appellants are saying that because the state gave an advantage to one segment of the trucking industry, it must give the same advantage to them because their trucks are just as safe. This ignores the reason why the advantage was given to the auto carriers. The police power may be exercised to benefit an industry. This is a proper public purpose and supports the classification involved.

It is more likely that the industrial interplant permits were authorized to benefit the automobile industry. American Motors, the smallest member of the auto industry, transports auto bodies from Milwaukee to its assembly plant in Kenosha. (Volk, p. 31) That Wisconsin might want to give American Motors an assist in its competition with the giants of the industry is fully understandable. Such a use of the police power is permissible.

In *Sproles v. Binford*, 286 U.S. 374 (1932), the court dealt with a Texas law regulating the size and weight of motor vehicles on highways. The court held that limitations of size and weight are manifestly subjects within the broad range of legislative discretion, and that absent national legislation covering interstate commerce, a state may rightly prescribe uniform regulations to promote safety upon its highways. The law was challenged as a denial of equal protection because it exempted from the limitations as to size, implements of husbandry, well drilling machinery, and road building machinery. The court had no difficulty upholding these exemptions. The law also fixed approximately the same limit of length for individual motor vehicles as for combinations of vehicles. The court concluded that if the state saw fit in this way to discourage the use of such trains or combinations on its highways, there is no constitutional reason why it should not do so. The law also allowed greater vehicle length when the vehicle is being operated between points of origin or destination and common carrier receiving or loading and unloading points. It was pointed out that these are relatively short trips, and the court concluded that the legislature in making its classifications is entitled to consider the frequency and character of the use and adapt its regulations to the classes of operation, which by reason of their extensive use of the highway brought about the conditions making the regulations necessary. It was

argued that this was designed to favor railroads over motor trucks. The court concluded that, if this was the motive, it does not follow that the classification would be invalid. The state has a vital interest in the appropriate utilization of the railroads which serve its people. The law also permitted heavier loads to be hauled on buses than on trucks. It was argued that the damage to highways is as great from a load of persons as from a load of freight. The court said this would be controlling if there were no other reasonable basis for classification other than weight. The court said the state has a distinct public interest in the transportation of persons. Persons and property need not be treated as falling within the same category for purposes of highway regulation. The importance of promoting employment and recreation, and the special dependence of varied social and educational interests upon freedom of intercourse through safe and accessible transportation, are sufficient to support a classification of passenger traffic as distinct from freight. This classification does not lack a rational basis.

Thus, the Supreme Court at an early stage in the development of commercial highway transportation recognized that limitations of size are within the police power of the state to promote highway safety, and that exceptions for certain vehicles such as implements of husbandry, well drilling and road machinery are permissible. They also held that a state could discourage vehicle trains on its highways, and that the state can consider the length of trips in granting extra length restrictions, and can so regulate highways as to benefit railroads. It was also held that buses may carry heavier loads than trucks even though damage to the road is the same regardless of whether people or freight are being hauled. This was because there was a reasonable basis for the classification other than highway damage. This clearly refutes the contention of the appellants that the only

permissible purposes of highway regulation in which there is a public interest are highway safety, protection of the highway from wear, and reducing highway congestion. This case stands for the proposition that in addition to such police power purposes, highway regulations may contain exemptions which are not necessarily directed at safety, but which promote the interests of farmers, well drillers, road builders, and railroads, as well as promoting improved social relationships among people. There are public interests here involved which are not directly related to highway safety. Nevertheless, classifications which promote such interests have a rational basis and do not violate equal protection.

In *Morris v. Duby*, 274 U.S. 135 (1927), the court said, of course, the state may not discriminate against interstate commerce, citing *Buck v. Kuykendall*, 267 U.S. 307 (1925), and went on to quote from that case as follows:

"With the increase in numbers and size of the vehicles used upon a highway, both the danger and the wear and tear grow. To exclude unnecessary vehicles—particularly the large ones commonly used by carriers for hire — promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject . . ."

The court in the *Morris* case went on to say:

"The mere fact that a truck company may not make a profit unless it can use a truck with a load weighing 22,000 or more pounds does not show that a regulation forbidding it is either discriminatory or unreasonable . . ."

The decision in this case, taken together with the decision in *Sproles v. Binford*, *supra*, clearly establishes that length of vehicles and trailer trains have a relation to highway safety, and that a state may prohibit long trucks and trailer trains, and that such classifications are reasonable. Appellants do not really dispute this basic conclusion, except to argue that, because we permit some other vehicles of similar length and articulated configuration, we must also permit plaintiffs long, articulated vehicles. We have shown above that our different treatment of certain others is based upon principles of reasonable classification which do not violate equal protection.

B. Wisconsin's refusal to permit 65 foot twin trailers on its highways is not an undue burden upon interstate commerce.

1. The court uses a balancing test.

Appellants' principal argument is that our refusal to allow 65 foot twin trailers generally, at least upon our interstate highways, is an undue burden upon interstate commerce. They point out how this affects their profits and ask the court to balance this burden against the safety aspects involved. They ask the court to find that their financial burden outweighs the safety considerations and that, therefore, such burden constitutes an undue burden on interstate commerce. With this in mind, it will be helpful to summarize some of the leading cases in this field.

An early case was *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U.S. 177 (1938). State law prohibited the use on state highways of trucks and semi-trailers exceeding 90 inches in width and 20,000 pounds in weight, and the principal question was whether these prohibitions impose an unconstitutional burden on

interstate commerce. The court held that they do not. The court said:

" . . . Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. There are few, local regulation of which is so inseparable from a substantial effect on interstate commerce . . . "

Continuing, the court said that the state may not under the guise of regulation discriminate against interstate commerce. However, in the absence of national legislation, especially covering the subject of interstate commerce, the state may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens. The court further said that Congress may determine whether the burdens imposed by state regulation are too great, and may by legislation curtail to some extent the state's power. But that is a legislative, not a judicial, function to be performed in the light of the congressional judgment of what is appropriate regulation of interstate commerce, and the extent to which state power should yield to national authority. The court concluded that in the absence of such federal legislation the judicial function under the commerce clause stops with the inquiry whether the state legislature acted within its province and whether the means of regulation chosen are reasonably adapted to the end sought. Courts do not sit as legislatures and cannot act as Congress does when, after weighing conflicting interests, it determines when and how much the state regulatory power shall yield to the larger interests of national commerce. A court is not called upon, as are state legislatures, to determine what in its judgment is the most suitable restriction to be applied, or to choose that one which in its opinion is best adapted to all the diverse

interests affected. The court went on to point out that when the action of a legislature is within the scope of its power, fairly debatable questions as to its reasonableness, wisdom, and propriety are not for the determination of courts, but for the legislative body, on which rests the duty and responsibility of decision. This applies equally where interstate commerce is involved, and courts are not anymore entitled, because interstate commerce is affected, to substitute their own for the judgment of the legislature. Since the regulation is a legislative, not a judicial, choice, its constitutionality is not to be determined by weighing in the judicial scales the merits of the legislative choice and rejecting it if the weight of evidence presented in court appears to favor a different standard. The court said they would examine the record, not to see if the findings of the court below are supported by evidence, but to ascertain upon the whole record whether it is possible to say that the legislative choice is without rational basis. The court concluded as to weight limits that the fact that many other states have adopted a different standard is not persuasive. The legislature, being free to exercise its own judgment, is not bound by that of other legislatures. It would hardly be contended that if all the states had adopted a single standard none, in the light of its own experience and in the exercise of its own judgment upon all the complex elements which enter into the problem, could change it.

Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945), involved the question whether a state law limiting the length of trains constitutes an undue burden on interstate commerce. The court found that the benefit of short trains in reducing accidents due to slack action was more than offset by the increased number of accidents caused by running more trains. The court also found a great burden on interstate commerce due to the necessity of breaking up long trains for operation through the state and then

reassembling them into long trains again on leaving the state. The court concluded (325 U.S. 781, 782) that here the state has gone too far. Its regulation of train lengths, admittedly obstructive to interstate train operation, and having a seriously adverse effect on transportation efficiency and economy, passes beyond what is plainly essential for safety since it does not appear that it will lessen rather than increase the danger of an accident. The court further concluded (325 U.S. 783, 784), that here, examination of all relevant factors makes it plain that the state interest is outweighed by the interest of the nation in an adequate, economical and efficient railway transportation service, which must prevail. However, they distinguished this situation from that involving state control of its highways, and said (325 U.S. 783), that *South Carolina State Highway Dept. v. Barnwell Bros.*, *supra*, was concerned with the power of the state to regulate the weight and width of motor cars passing interstate over its highways, a legislative field over which the state has a far more extensive control than over interstate railroads.

In *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959), an Illinois statute required that all trucks have a certain type of curved mud guard, rather than the conventional mud flap which was legal in at least 45 other states. Arkansas prohibited the curved mud guard and required straight mud flaps. The Illinois statute was challenged as an undue burden on interstate commerce. The court said that unless they can conclude on the whole record that the total effect of the law as a safety measure is so slight as not to outweigh the national interest in keeping interstate commerce free from interferences which seriously impede it, they must uphold the statute. There was substantial cost involved in installing the new mud guards and their safety benefits were not at all clear. The court said that if it were only these cost and safety factors involved, they would sustain the law. The court went on to

point out the burden on interstate commerce caused by the need to install the new mud guards upon entering Illinois. The court concluded that this is one of those cases, few in number, where local safety measures that are nondiscriminatory place an unconstitutional burden on interstate commerce. The court further concluded that the present showing, balanced against the clear burden on commerce, is far too inconclusive to make this mud guard regulation meet the test.

Brotherhood of Loc. F & E. v. Chicago, R. I. & P. R. Co., 393 U.S. 129 (1968), held the Arkansas full train crew law was not an undue burden on interstate commerce. The lower court had found based upon the evidence that the full crew laws had no substantial effect upon safety, and that the financial burden of compliance was out of all proportion to the benefit, if any. The Supreme Court said that the lower court indulged in a legislative judgment wholly beyond its limited authority to review state legislation under the commerce clause. The evidence was conflicting and inconclusive, and the court after summarizing the evidence, concluded that this summary leaves little doubt that the question of safety in the circumstances of this case is essentially a matter of public policy which under our constitutional system can only be fixed by the people acting through their elected representatives. The lower court's responsibility for making findings certainly does not authorize it to resolve conflicts in the evidence against the legislature's conclusion. Nor was it open to the lower court to place a value on the additional safety in terms of dollars and cents in order to see whether this value exceeded the financial cost to the railroads. The court concluded that it is difficult at best to say that financial losses should be balanced against the loss of lives and limbs of workers and people using the highways.

The full crew law, because it did not apply to small

mileage railroads, was not applicable to intrastate railroads, while it did apply to interstate railroads. In the face of this direct discrimination against interstate commerce, the court concluded that the difference in treatment based on differing track mileage might have a rational basis, because the short-line roads run slower, and run shorter trains. Also the smaller railroads would be less able to bear the additional cost. Finally, the court concluded these disputes will continue to be worked out in the legislature. However, in the absence of congressional action, the court would not invoke the judicial power to invalidate this judgment of the people of Arkansas and their elected representatives as to the price society should pay to promote safety in the railroad industry.

2. Prohibition of twin trailers does not prevent interlining.

Appellant, Consolidated, points out that they have to divide twin trailers in Wisconsin, run some 55 foot semis in lieu of twins, and operate twins in longer mileage around Wisconsin, which costs them some \$2,000,000 a year. They have minimized this burden so well by cost and service conscious management that their operating ratio is substantially better than the industry average. Operating ratio is the ratio of operating expense to revenues. Consolidated's average is 92.4 which shows they have held their costs down better than the industry as a whole which has a 94.5 average. (Wrightson affidavit, pp. 4, 15) While \$2,000,000 is no small sum, these figures show that Consolidated is able to operate more efficiently than competitors in spite of this disadvantage. However, in the *Bibb* case, *supra*, the court pointed out that such a cost showing alone is not enough to overturn the law. In that case the court found an undue burden on interstate commerce because the necessity of installing the curved mud guards upon entering Illinois made interlining

impossible. Interlining is the practice in the trucking industry of exchanging trailers between lines, the same as railroads haul each other's cars. The court said this is one of the cases, few in number, where a local safety measure has to yield because of the burden on interstate commerce. Appellants here contend that their case also is one of those cases, few in number. They contend that they can't interline because of Wisconsin's twin trailer ban. Apparently, they mean that another trucking company cannot pick up one of their trailers and haul it with one of its own, in twin trailer style, through Wisconsin. This is, of course, true, but this does not prevent interlining; it only makes it more expensive. In *Bibb* a trucker could not pick up another's trailer without the curved mud guards and haul it through Illinois. However, a trucker can readily pick up another's trailer and haul it through Wisconsin, because we have no equipment requirements that keep that trailer out of Wisconsin. What the trucker cannot do is pick up two trailers, or one trailer added to one of his own, and then haul them both through Wisconsin. Either trailer can be hauled singly through Wisconsin. This does not prevent interlining; it only makes it more expensive, and the court has held that expense alone is not enough to overturn the law.

In the *Bibb* case the problem was that Illinois was the only state which required the curved mud guards. They were legal but not required in most other states except Arkansas, which prohibited their use and required the standard mud flap which was also legal in most states. Thus, the curved mud guard was legal in all states but one. The situation with 65 foot twin trailers is not the same. Many states allow them, but many states prevent them. The evidence in this case includes a colored map of the United States. Shown in blue are the states which permit 65 foot twin trailers. There are certain exceptions. In Iowa they are limited to 60 feet. In New York, Massachusetts,

and Florida, 65 foot twin trailers are permitted only on turnpikes which include the interstate highways. Shown in green, Mississippi, Georgia, and New Jersey allow twin trailers of less than 60 feet. Shown in yellow are the states which prohibit twin trailers entirely.

It is true that Wisconsin law does prevent running 65 foot twin trailers from Chicago through Wisconsin to Seattle. This can't be done through Iowa either. Similarly, 65 foot twin trailers cannot be run all the way from Chicago to Florida. Although they can be run on Florida's turnpikes and interstates, they can't get there because Tennessee, Mississippi, Alabama, and Georgia don't allow it. Similarly, 65 foot twin trailers cannot be run from Ohio to New York and Massachusetts, where they are legal on turnpikes and interstates, because Pennsylvania won't allow it. Also they cannot be run from Ohio to Maryland and Delaware, where they are legal, because they can't get through Pennsylvania and West Virginia. In all there are 20 states which prohibit, or limit the operation of 65 foot twin trailers. Of these, 17 states prohibit them entirely and 3 states prohibit them except on certain highways. This is nothing like the situation in the *Bibb* case where only one state required the curved mud guards. Here we have 17 states that prohibit 65 foot twin trailers and 3 that limit their use. In *Bibb* only one state was out of step with the rest of the country. Here, there are 17 to 20 states out of step with what are predominantly western states. The court in this case is not ruling on the constitutionality of the law of one state. In effect, the court will here be ruling on the constitutionality of the law of 17 states. We suggest that the *Bibb* case principle should not be extended to this extent.

3. Wisconsin's chief concern is the extra length of twin trailers.

Appellants' twin trailers have been denied permits primarily because they exceed statutory specification of maximum length of vehicles generally, which is 55 feet. Vehicle size bears a direct relation to safety. The court recognized this in *Morris v. Duby, supra*, where it quoted from a previous case to the effect that the increasing size of vehicles is increasing the danger, and excluding the larger vehicles promotes safety. In *Sproles v. Binford, supra*, the court recognized that limitation of the size of vehicles promotes safety and that there is no reason why states may not discourage the use of trains or combinations of vehicles. Thus, to exclude appellants' vehicles both because of their excessive length and their trailer train configuration is permissible in the interest of safety. However, appellants have shown that 65 foot twin trailers have a good safety record in other states. It is clear that officials of a number of states and the federal government are convinced that such vehicles are safe enough to be allowed on the highway.

Splash and spray tests were conducted on wet pavement but not during a rain, wind, or snow storm. They wanted to isolate the effect of the vehicle entirely from what happens when it is raining, so they didn't measure rain storm conditions. (Sherard deposition, pp. 37-39) While those test results may be useful, the problem facing Wisconsin drivers is passing or being passed by long trucks under stormy conditions. Mr. Sherard also claimed that the extra length of twins is an advantage in causing less splash and spray because of skin friction which actually pulls the air currents in tighter to the sides of the vehicle. The length of the vehicle gives the increased benefit. (Sherard deposition, pp. 18, 19, 49) It is doubtful that a Wisconsin driver who has been passed by a long truck in a storm would be willing to accept the proposition that there is less snow, slush or rain on his windshield than there would be if the truck were shorter. All he knows is that driving with an

obstructed windshield for an extra 10 feet of truck length is something he would prefer to avoid because of the obvious hazards involved.

Another witness pointed out that with a truck traveling at 50 miles per hour and a car traveling 10 miles per hour faster, it would take approximately two-thirds of a second longer to pass the additional 10 feet in length of the 65 foot twin trailers. This is an apparent attempt to show that the additional passing time for the longer trucks is insignificant. However, he admitted that with trucks and cars now allowed to travel the same speed, a car, which could go only two or three miles per hour faster than the truck, would take longer to get by the truck. (Easton deposition, pp. 39, 40) A Wisconsin driver is not likely to appreciate an extra two-thirds of a second or longer where his windshield is obscured by rain, slush or snow. The dangers are obvious.

4. The court should leave this problem to the legislature.

In *Barnwell*, the court held that states may regulate highway safety and that Congress may determine whether the burden on interstate commerce is too great. However, that is a legislative and not judicial function. The courts will not weigh the relative merits in the judicial scales, and will uphold the legislation if it has a rational basis. In the case presently before the court there is a sharp conflict in the evidence. While twin trailers have a good record in other states, there are obvious safety hazards in passing the extra length in bad weather. They also are heavier and can do more damage in collisions. The people of this state have shown great concern over these hazards. There is room for a difference of opinion and the opposition of the people is not irrational. In the *Southern Pacific* case the court admittedly weighed the state interest in train safety

against the national interest in interstate commerce and struck down the train length law as an undue burden on interstate commerce. In so doing the court carefully distinguished the situation in *Barnwell* and pointed out that a state has far more control over highways than railroads.

In *Bibb*, the court said it would uphold the law unless it can see that the benefits of the safety measure are so slight as not to outweigh the national interest. The court pointed out that because of the impact upon interlining, this is one of the few cases where the burden on commerce outweighs the safety measure. We have pointed out that this is not applicable to the case presently before the court, because here interlining is possible although not as profitable and the court in *Bibb* made it clear that high cost alone is not enough to overturn a law. In the *Full Crew Law* case, the court retreated from its balancing test and held that the evidence in that case left little doubt that the question of safety is essentially a matter of public policy which, under our constitutional system, can only be resolved by the people acting through their elected representatives. The court's responsibility does not authorize it to resolve the conflicts in the evidence against the conclusion of the legislature. The court left the problem to be worked out in the legislature. In view of the massive concern of the legislature, the Highway Commission, the Governor, the newspapers and the people of this state, we think the court should leave the present long truck controversy to be worked out by the legislature and the people of this state. This is especially true where a total length of 70, 75 or 85 feet would in all likelihood be equally as safe as 65 feet. The choice of how far to go is legislative and not judicial in nature.

CONCLUSION

This appeal does not involve a substantial federal question for the reason that the *Bibb* case, *supra*, in effect, answers the questions here raised in favor of the constitutionality of Wisconsin's prohibition of twin trailers. The appeal should be dismissed on this ground.

Respectfully submitted,

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In the

SUPREME COURT of the UNITED STATES

October Term, 1976

No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC.,
a Minnesota Corporation

and

CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE
a Delaware Corporation,

Appellants,

vs.

ZEL S. RICE, ROBERT T. HUBER, JOSEPH
SWEDA, REBECCA YOUNG, WAYNE VOLK,
LEWIS V. VERSNIK, and BRONSON C.
LA FOLLETTE,

Appellees.

*On Appeal From The United States District Court
For The Western District of Wisconsin*

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In the
SUPREME COURT of the UNITED STATES

October Term, 1976

No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC.,
a Minnesota Corporation
and
CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE
a Delaware Corporation,

Appellants,

vs.

ZEL S. RICE, ROBERT T. HUBER, JOSEPH
SWEDA, REBECCA YOUNG, WAYNE VOLK,
LEWIS V. VERSNIK, and BRONSON C.
LA FOLLETTE,

Appellees.

On Appeal From The United States District Court
For The Western District of Wisconsin

BRIEF FOR THE APPELLANTS

I. OPINION OF THE COURT BELOW

The opinion of the District Court for the Western District of Wisconsin is published at 417 F. Supp. 1352. A copy of the opinion is printed in the Jurisdictional Statement as Appendix A. References to the opinion of the District Court in this brief are to the appropriate page of the Jurisdictional Statement.

II. JURISDICTION

This action was brought under 28 U.S.C. §§1331, 1332, 1343, 2201 and 2202, and 42 U.S.C. §1983 to invalidate and enjoin enforcement of a regulation of the State of Wisconsin which bans the use of twin trailer vehicle combinations on Interstate Highways. The state regulation was alleged to violate the commerce clause and the Fourteenth Amendment to the United States Constitution.

On August 13, 1976, the District Court granted judgment for the defendants. Notice of Appeal was filed by appellants on September 29, 1976, in the United States District Court for the Western District of Wisconsin. A copy of the Notice of Appeal is set forth in Appendix B to the Jurisdictional Statement.

Jurisdiction of the Supreme Court to review this decision by direct appeal was conferred by 28 U.S.C. §1253¹. Under 28 U.S.C. §2101(b) a direct appeal under 28 U.S.C. §1253 must be taken within 60 days of a final judgment. This Court noted probable jurisdiction on March 7, 1977.

¹28 U.S.C. §2281, which mandated a three-judge court in this case has been repealed, but it does not affect the requirement of direct appeal to the Supreme Court for cases commenced before August 12, 1976, Pub. Law 94-381 (August 12, 1976).

III. CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The United States Constitution provides:

"The Congress shall have power . . . to regulate Commerce with foreign Nations, and among the several States . . ."
Art. I, §8.

. . .

"No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." Amend. XIV

§Hy 30.14 (3)(a), Wisconsin Administrative Code, reads as follows:

(a) Trailer-train permits shall be issued only for the operation of vehicles used for the transporting of municipal refuse or waste, or for the interstate or intrastate operation without load of vehicles in transit from manufacturer or dealer to purchaser or dealer, or for the purpose of repair.

Other relevant statutes and regulations are set forth in the Appendix to this brief.

IV. QUESTIONS PRESENTED

A. Does Wisconsin's refusal to permit twin trailers on the Interstate Highways in Wisconsin violate the commerce clause by placing a burden on interstate commerce which outweighs any legitimate local interest?

B. Does the Wisconsin regulatory scheme for vehicles unconstitutionally discriminate against interstate commerce?

V. STATEMENT OF THE CASE

Appellant Consolidated Freightways Corporation of Delaware ("Consolidated") is a large general commodity carrier, operating in 45 states under authority granted by the Interstate Commerce Commission. Appellant Raymond Motor Transportation, Inc. ("Raymond") is a small general commodity carrier which has Interstate Commerce Commission authority to pick up and deliver freight in the States of Illinois, Minnesota, and North Dakota.

Where permitted, both Appellants utilize twin trailer vehicles in their operations.¹ Twin trailers offer significant advantages to general commodity carriers. They allow carriers to substitute transfer of trailers for transfer of cargo causing dramatic reductions in transit time and operating costs. The low density of general commodity freight enables carriers to utilize the additional volume of twin trailer combinations,² thereby reducing equipment

¹The twin trailer vehicle combination at issue here consists of a tractor and two 27-foot trailer units. Total length of the combination is 65 feet. The first trailer is attached to the tractor in a manner similar to that of a conventional semi-trailer. The front of the second unit rides upon a dolly attached to the rear of the first. A schematic representation of a twin trailer combination is reproduced in the District Court's decision at page 23a of the Jurisdictional Statement. The Appendix contains a photograph of a twin trailer at p. 276. Because shorter trailers would be less stable, 27-foot trailers have become the industry standard (A. 81-82, 324). The length of two 27-foot trailer units and a tractor is 65 feet.

²Twin trailer combinations have 53 linear feet of available cargo space; 55 foot semi-trailer combinations have 39.5 linear feet of available cargo space (A. 373).

costs, energy consumption, and operating costs. These advantages have resulted in twin trailers becoming the industry standard for interstate carriage of general commodity freight (A. 323-324).

By statute and administrative regulation Wisconsin generally prohibits vehicles in excess of 55 feet in length and vehicles having more than one trailer.⁴ However, under a complex permit system, the Wisconsin Highway Commission routinely issues large numbers of various types of permits for the operation of oversized vehicles up to 85 feet in length and vehicles having more than one trailer. Were it not for §Hy 30.14(3)(a) of the Wisconsin Administrative Code, which limits trailer train permits to certain specified purposes, the Highway Commission would have the power to grant permits to appellants for the operation of 65-foot twin trailers in interstate commerce and limit such operation to designated Interstate Highways.⁵

Wisconsin's ban forces carriers to use one of three alternatives to maintain system traffic along the principal northern East-West interstate route, choosing among the alternatives according to operating factors. Appellant

⁴WIS. STAT. §§348.07(1), 348.08 (1975). WIS. ADMIN. CODE §Hy 30.01(3)(c).

⁵WIS. ADMIN. CODE §Hy 30.14(3)(a) states:

"(3) General Limitations On The Issuance of Trailer-Train Permits. The issuance of trailer-train permits shall be subject to the general limitations stated in Wis. Adm. Code sections Hy 30.01(3)(c) 2 and 4, and the following:

(a) Trailer-train permits shall be issued only for the operation of vehicles used for the transporting of municipal refuse or waste, or for the interstate or intra-state operation without load of vehicles in transit from manufacturer or dealer to purchaser or dealer, or for the purpose of repair.

Consolidated maintains staging areas near the Wisconsin state line in Illinois and Minnesota where twin trailer combinations may be separated, and an additional tractor added so that the individual trailer units can be hauled singly through Wisconsin to the opposite border where they are recombined. Both Appellants use semi-trailer equipment on routes having a Wisconsin segment, even though twin trailers are legal on the majority of the route (A. 311-314, 371-372). Finally, Appellant Consolidated diverts traffic from the most direct routing through Wisconsin and routes it through Missouri to avoid the Wisconsin ban (A. 307-314). Each of these alternatives results in diminution of the quality and availability of service and increased cost of service in other states as well as Wisconsin.

The Appellants applied to the Wisconsin Highway Commission for permits to allow them to operate twin trailers on the principal Interstate Highway routes through Wisconsin.⁶ The Highway Commission denied the permits on the basis of WIS. ADMIN. CODE §Hy 30.14(3)(a). Appellants then brought suit in the District Court for the Western District of Wisconsin, alleging that the state's refusal to issue permits was a violation of the equal protection clause of the Fourteenth Amendment and the commerce clause.

⁶The highways in question are Interstate Highways 90, 94 and 894. Interstate 94, in conjunction with Interstate 90, provides a four-lane, limited access highway from Detroit, Michigan to Seattle, Washington. Twin trailers are permitted the length of Interstate 94 save for the segment in Wisconsin. Interstate 894 is an alternate or by-pass route in Milwaukee County, Wisconsin. Both Interstate 90 and 94 run from the southern border of Wisconsin in a generally northwesterly direction to Wisconsin's western border with Minnesota. Appellant Consolidated also requested permits to operate twin trailers on four-lane connecting roads to two Wisconsin terminals located near the Interstate Highways.

A three-judge Court was impanelled on April 24, 1975. By stipulation of counsel, trial was by the submission of affidavits, depositions, and exhibits without live testimony (A. 29).⁷ The District Court denied the requested relief basing its decision upon its determination that regulation of motor vehicle length and type is within the province of the state legislature, and that the burdens thereby imposed on interstate commerce are not unconstitutional. In addition, the District Court held the state's regulatory scheme to be neutral and nondiscriminatory. The District Court found it unnecessary to consider whether less burdensome alternatives were available to the State than the total ban of twin trailers from all highways.

VI. SUMMARY OF ARGUMENT

The appropriate standard to determine constitutionality of a state regulation of commerce is the balancing test contained in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). To be valid, the state regulation must meet each of the elements of that test: (1) it must be non-discriminatory; (2) the local interest served must outweigh the burden on commerce; and (3) the regulation must be the least burdensome alternative available.

⁷The District Court's opinion does not contain detailed findings of fact separate from its conclusions. If this Court deems it necessary it may remand for further specific findings of fact, or may determine the undecided questions itself from the record, *Gerdes v. Lustgarten*, 266 U.S. 321, 327-328 (1924); *McCardle v. Indianapolis Water Co.*, 272 U.S. 400 (1926). Inasmuch as plaintiffs sought injunctive relief, will sustain substantial financial and intangible damage as a result of delay, and inasmuch as the lower court did not rest its decision on the demeanor and credibility of the witnesses, it would be appropriate for this Court to follow the latter course.

Wisconsin's regulatory scheme for the size and weight of motor vehicles discriminates against interstate commerce. It does so directly by allowing industries in Wisconsin to use oversize vehicles for operation between plants or from plants to the state line, while denying similar exemptions to the industries of other states. It does so indirectly under a permit system which exempts industries of importance to Wisconsin from the size and weight limitations while retaining those limits for industries not important to Wisconsin. Moreover, Wisconsin places special limitations on twin trailers, a type of equipment which is principally used in interstate commerce.

Wisconsin's refusal to permit twin trailers on Interstate Highways causes Wisconsin to be an "island", imposing an artificial and unnatural barrier to motor carriage over the principal interstate route between Detroit and Seattle. The barrier thus created disrupts and fragments a national system for the interstate carriage of general commodities. Wisconsin's geographic location prevents accommodation by carriers on a regional basis. Carriers are forced to divert traffic around Wisconsin, operate semi-trailers in states where twin trailers are allowed, and operate staging areas where twin trailers can be separated to be hauled individually through Wisconsin.

These alternatives cause increased operating costs and delays, not just for Wisconsin shippers, but for shippers in other states as well. Energy consumption is increased by the use of inefficient equipment, indirect routes, and the necessity of moving twin trailers separately through Wisconsin. Incompatible equipment reduces the possibility of shifting equipment from routes through Wisconsin to other states and reduces or eliminates the

practice of interchanging equipment with other carriers in the motor transportation system.

These burdens are not justified by safety considerations. The evidence on safety is uncontradicted and overwhelming. Appellants submitted expert testimony, tests, actual experience of other states, and statistical surveys conclusively showing that twin-trailers are as safe or safer than the typical semi-trailers now operated in Wisconsin. The sole safety factor cited by the District Court in its opinion is unsupported by the record and against the clear weight of the evidence.

The District Court founded its conclusions on presumptions contained in cases decided before *Pike v. Bruce Church, supra*. Those presumptions, that state regulations of motor vehicles for safety purposes are valid and that size is inherently tied to safety, were rebutted by the evidence in this case. Moreover, they are inappropriate to apply under *Pike* which requires a determination of the facts of each case. Finally, the District Court failed to consider whether there were reasonable alternatives to Wisconsin's total prohibition of twin trailers. The relief requested in this case, use of twin trailers by permit on Interstate Highways, is a reasonable alternative that preserves the state's local interest while removing a significant burden from commerce.

Application of the *Pike* standard to state regulation of motor vehicles will not result in widespread invalidation of state regulations. It will permit a delicate and precise balancing of state and national interests that could not otherwise be accomplished.

VII. ARGUMENT

A. THE APPROPRIATE LEGAL STANDARD TO BE APPLIED IS A BALANCING OF THE STATE'S LOCAL INTERESTS AND THE BURDEN ON INTERSTATE COMMERCE.

Since the inception of this nation, there has existed an inherent conflict in our federal system between the power of the states to regulate commerce for the protection and benefit of their citizens and the need for commerce between the states to be free and unhindered. The replacement of the Articles of Confederation with the Constitution was an immediate result of the country's dissatisfaction with the prior resolution of that conflict in favor of the powers of the individual states.⁸

The commerce clause clearly gave Congress power to regulate interstate commerce. The far more difficult question is to what extent the grant of power to the national government limited the powers of the states to regulate interstate commerce. That is the question presented in this case, and is one which this Court has been unable to answer decisively and precisely in the course of our history.

⁸"The sole purpose for which Virginia initiated the movement which ultimately produced the Constitution was 'to take into consideration the trade of the United States; to examine the relative situations and trade of said States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony' and for that purpose the General Assembly of Virginia in January of 1786 named commissioners and proposed their meeting with those from other states. Documents, *Formation of the Union*, H.R. Doc. No. 398, 12 H. Docs., 69th Cong., 1st Sess., p. 38." *H.P. Hood & Sons v. DuMond*, 336 U.S. 525, p. 533 (1949); see also, *THE FEDERALIST*, No. XLII.

This court's most recent enunciation of the standard to be applied in determining whether a state regulation violates the commerce clause is a balancing test:

"Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. *Huron Cement Co. v. Detroit*, 362 U.S. 440, 443. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

Such a balancing test offers none of the advantages of a fixed standard. Cases decided under it are of little value as precedent. By failing to provide a firm legal rule, it delegates to the courts decisions of policy which our system normally reserves to elected representatives. Its virtue, however, overcomes its faults. Unlike every attempt of this Court to enunciate a fixed standard, the balancing test of *Pike* has been successful in accommodating the competing policy interests.

When the difficulties are considered it is not surprising that the Court has been unable to enunciate a fixed standard which has endured. Regulation of domestic and foreign commerce is a principal function of government, and division of the authority to regulate commerce among the

governments in the federal system is bound to be difficult.⁹ Moreover, commerce in this country has undergone rapid development and change which has increasingly intertwined intrastate, interstate, and foreign commerce.

There have been two major attempts to develop a fixed standard for delineating the powers of the states from those of the federal government. The first was initiated in *Cooley v. Board of Wardens*, 53 U.S. (12 How.) 299 (1851):

"Now, the power to regulate commerce embraces a vast field, containing not only many, but exceedingly various subjects, quite unlike in their nature; some imperatively demanding a single uniform rule . . . and some, like the subject now in question, as imperatively demanding that diversity, which alone can meet the local necessities of navigation.

. . . Whatever subjects of this power are in their nature national, or admit only of one uniform system, or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress." 53 U.S. 299, 319.

To determine the constitutionality of state regulation under *Cooley*, it was only necessary to properly categorize each area of commerce, then determine whether state or federal regulation was appropriate.

⁹"It would be in vain to deny the possibility of a clashing and collision between the measures of the two governments. The line cannot be drawn with sufficient distinctness between the municipal powers of the one and the commercial powers of the other. In some points they meet and blend so as scarcely to admit of separation." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 238 (1824) (Justice Johnson, concurring).

The difficulty with the method lay in the categorization.¹⁰ The blending of the powers and of the policy interests made the test in *Cooley* unworkable, for within the same subject matter the magnitude of the national interest might vary substantially. Thus, in *Pennsylvania v. Wheeling and Belmont Bridge Co.*, 53 U.S. (13 How.) 518 (1851) the Court struck down, in part on interstate commerce grounds, a state statute which permitted the building of a bridge which impeded interstate traffic on the Ohio River. In *Escanaba and Lake Michigan Transportation Company v. Chicago*, 107 U.S. 678 (1882), however, the Court upheld a Chicago ordinance which impeded interstate traffic on the Chicago River by prohibiting bridge openings during rush hour. The conflicting results cannot be attributed to differing subject matter, but rather to the differing weights accorded the burden on national commerce and the local interest in each case.

The Court's second attempt to determine a fixed standard was firmly founded in constitutional theory. States could not regulate interstate commerce directly, having surrendered that power to the federal government, but they retained the power to regulate their own commerce. Limited regulation of interstate commerce incidental to the exercise of that retained power would be permissible. Constitutionality thus depended upon whether the

¹⁰It was not by happenstance that the original simile of "a grey area of the law" was created by Chief Justice Marshall in delineating state from federal power over commerce.

"The power [to tax commerce] and the restriction on it, though quite distinguishable when they do not approach each other, may yet, like the intervening colors between white and black, approach so nearly as to perplex the understanding, as colors perplex the vision in marking the distinction between them. Yet the distinction exists, and must be marked as the cases arise." *Brown v. Maryland*, 25 U.S. (12 Wheat.) 419, 441 (1827).

regulation was direct or indirect. The theory was sound, but the application impossible. Justice Stone succinctly summarized the actual experience under the "direct-indirect burden" test:

"In thus making use of the expressions, 'direct' and 'indirect interference' with commerce, we are doing little more than using labels to describe a result rather than any trustworthy formula by which it is reached." *Di Santo v. Pennsylvania*, 273 U.S. 34, 44 (1927) (Justice Stone dissenting).

Justice Stone's suggested alternative, the consideration of the policy interests in each individual case, has evolved into the balancing test of *Pike*.

Pike establishes a three part test. To be upheld, the state regulation must first be found to be nondiscriminatory. Then, the "legitimate local interests" must be determined to outweigh the burden on commerce. Finally, the regulatory alternative selected must be the least burdensome available.

B. WISCONSIN'S REGULATORY SCHEME DISCRIMINATES AGAINST INTERSTATE COMMERCE THUS VIOLATING THE COMMERCE CLAUSE AND FOURTEENTH AMENDMENT.

A common thread in commerce cases has been the prohibition of discrimination between local and interstate commerce. Every major Supreme Court case applying the commerce clause to motor transportation has reiterated the requirement that the state regulation be non-discriminatory:

"But so long as the state action *does not discriminate*, the burden is one which the Constitution permits . . ." *South Carolina Highway Department v. Barnwell Bros.*, 303 U.S. 177, 189 (1938). (Emphasis added)

"In the absence of national legislation especially covering the subject of interstate commerce, the state may rightly prescribe *uniform* regulations adapted to promote safety upon its highways and the conservation of their use *applicable alike to vehicles moving in interstate commerce and those of its own citizens*." *Morris v. DUBY*, 274 U.S. 135, 143 (1927). (Emphasis added)

"In the instant case, there is no *discrimination against interstate commerce* . . ." *Sproles v. Binford*, 286 U.S. 374, 390 (1932) (Emphasis added)

"We . . . have upheld state statutes applicable *alike to interstate and intrastate commerce* . . . This is one of those cases — few in number — where local safety measures that are *non-discriminatory* place an unconstitutional burden on interstate commerce." *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 523, 529 (1959). (Emphasis added)

That prohibition is repeated in *Pike*'s statement of the balancing test:

"(T)he general rule that emerges can be phrased as follows: Where the statute regulates *evenhandedly* . . ." 397 U.S. at 142. (Emphasis added)

This requirement is the compelling result of both constitutional theory and practical experience.

In constitutional theory, the grant by the states to the federal government of the authority over interstate commerce was a surrender of that power by the states. The state might incidentally regulate interstate commerce but could not do so directly. If the state were to discriminate,

it would regulate interstate commerce separately, and thus directly. The state would exercise a power that it no longer possessed.

The practical lesson has been repeated throughout our history. States, as democratic governments, will legislate for the benefit of their constituents. If permitted, they will discriminate against the commerce of other states for their own economic advantage. The constituency is too small, and the viewpoint too narrow for it to be otherwise. The long litany of Supreme Court cases striking down state legislation beneficial to one state's commerce, but inimical to the commerce of the nation, shows that this tendency to fragment the economy is inherent and endures.

Wisconsin's regulatory scheme for limiting the size and weight of motor vehicles violates the constitutional theory and reiterates the historical lesson. The discrimination is not the conscious and intended objective of the legislature, but the natural result of Wisconsin acting for the benefit of its citizens and industries.

The state's regulatory scheme governing the size and weight of motor vehicles is neither simple nor clear in its statutory framework, administrative regulations, or interpretation of either. It suffers from an abundance of statutory and administrative amendments which respond to particular problems with little regard for the structure as a whole.

By statute, Wisconsin has imposed length (55')¹¹, height (13.5')¹², width (8')¹³ and weight (73,000 lbs.)¹⁴ limits on vehicles in Wisconsin. Wisconsin has created three classes of exemptions to these limits.

The first class of exemptions requires no permit approval by the Highway Commission. Included within this class are: overwidth exemptions for loads of hay bales, pulpwood, tie logs, tie slabs, and veneer logs¹⁵; overlength exemptions for mobile homes to sixty feet¹⁶ and tour trains¹⁷; and overweight exemptions for pulpwood in winter¹⁸ and a special and favorable method of determining pulpwood weight¹⁹.

In the second class are specific statutory exemptions which require permit approval by the Highway Commission. Included in this class are: oversize permits for

¹¹WIS. STAT. §348.07(1) (1975).

¹²WIS. STAT. §348.06(1) (1975).

¹³WIS. STAT. §348.05(1) (1975).

¹⁴WIS. STAT. §348.15(3)(d) (1975).

¹⁵WIS. STAT. §§348.05(2)(k) and (1) (1975).

¹⁶WIS. STAT. §§348.07(2)(d) (1975).

¹⁷WIS. STAT. §348.07(2a) (1975).

¹⁸WIS. STAT. §348.175 (1975).

¹⁹WIS. STAT. §348.19(1)(b) 1975. Exemptions are also provided for necessarily oversize loads such as farm equipment temporarily operated on the highways, or snow plows. WIS. STAT. §§348.05(2)(a)-(b), 348.06(2), 348.07(2)(e) (1975). Appellant has no objection to these exemptions of necessity.

mobile homes, trailer trains, interplant operations, automobile carriers, pulpwood²⁰, and agricultural machinery²¹; overweight permits for metal scrap²², and milk or fuel during an energy emergency²³.

Finally, the legislature has provided the Highway Commission with general authority to issue permits for oversize and overweight loads²⁴. Under this general authority the Highway Commission has provided by regulation for the issuance of such oversize permits as those allowing new sixty-five foot twin trailers being shipped to or from a dealer, or for repair²⁵, and permits for fifty-five foot twin tank trucks for hauling dairy products²⁶.

²⁰WIS. STAT. §§348.26(3-4), 348.27(4-7), (9) (1975). Pulpwood permits for 65 foot trucks are provided for companies hauling "peeled or unpeeled forest products" for use in their business, §348.27(5), or for any length of truck within 3 miles of the Michigan border, §348.27(9).

²¹WIS. STAT. §348.25(4)(b) (1975). Unlike the exemption of necessity for single agricultural implements, this exemption permits up to a sixty-foot long load of two items of agricultural machinery. Wisconsin Manufacturers of agricultural machinery such as J.I. Case Co. and Deere and Company may obtain permits under this section for shipment of their products. This exemption was enacted after trial of this case; Ch. 66, 1975 Wis. Laws.

²²WIS. STAT. §348.27(7m) (1975).

²³WIS. STAT. §348.27 (8) (1975).

²⁴WIS. STAT. §§348.26(2), 348.27(3) (1975).

²⁵WIS. ADMIN. CODE §Hy 30.14(3)(a) There is a Wisconsin manufacturer of twin trailers who routinely uses permits under this section for shipping sixty-five foot twin trailers, identical to those used by appellants, to buyers out of state (A 210-212).

²⁶WIS. ADMIN. CODE §§Hy 30.18(3)(a), 30.01(3)(c). The proposed regulations permitting transport of milk in fifty-five foot twin tank trailers were brought to the attention of the District Court at oral argument. They became effective on July 1, 1976. The dairy industry did not need sixty-five foot vehicles because gross load limitations are exceeded before the volume of a fifty-five foot twin tank truck is exceeded.

That general power is limited only by the requirement that the oversize or overweight load be one which "cannot reasonably be divided or reduced to comply with statutory size, weight or load limitations"²⁷. The Highway Commission, however, has interpreted "reasonably be divided" in an economic sense, and routinely grants oversize permits for loads that can be physically, but not economically, divided (A. 194-195, 200, 202-204, 210-212, 215-216, 258-261). These loads have included beer cans (A. 194, 228-232), car bodies (A. 259-260), car frames (A. 199-200), and small boats (A. 205, 232-234). These exemptions have freed much of Wisconsin's commerce from the burden of the regulatory scheme, while retaining that burden on interstate commerce.

1. Exemptions Are Granted Wisconsin Industries But Denied to Foreign Industries.

One type of exemption is blatantly discriminatory and violates both the Fourteenth Amendment and the commerce clause. The Highway Commission is authorized to issue permits to industries and their agents to operate oversize vehicles "in connection with interplant, and from plant to state line, operations in this state"²⁸. The Commission has interpreted this statute to permit the issuance of permits only to industries with a plant in Wisconsin, thus making the exports and interplant traffic of Wisconsin manufacturers exempt from size limits while imposing those same limits on foreign manufacturers shipping through or to Wisconsin. Usage of permits under this section is extensive. American Motors, for instance,

²⁷WIS. STAT. §348.25(4)(1975).

²⁸WIS. STAT. §348.27(4) (1975).

uses industrial interplant permits to run a continuous shuttle of trucks carrying car bodies over a distance of forty-five miles (A. 195-196). Joseph Schlitz Brewing Co. uses an interplant permit to transport empty beer cans in trucks to its canning facilities in Milwaukee (A. 228-232).

The District Court found the interplant exemption to be non-discriminatory, concluding that the Commission interpreted the statute to allow permits to be granted to residents or non-residents (Jurisdictional Statement, p. 9a, f.n. 9). The District Court reached its determination on the basis of Exhibit 5 to the deposition of Robert R. Weaver, Permit Supervisor for the Division of Highways. Exhibit 5 is a general review of policies regarding permits and states "permits are issued . . . without regard to whether the applicant is a resident of Wisconsin or not." (A. 264) The District Court apparently overlooked the following testimony of Mr. Weaver:

Q. . . . Were you responsible for the Department correspondence indicating the unavailability of a permit for the Godfrey Conveyor Company of Elkhart, Indiana, to transport loads of boats in excess of fifty-five foot length limits in Wisconsin?

A. Yes.

Q. And did you hear Mr. Volk's testimony to the effect that such a permit could have been issued to the Godfrey Conveyor Company, Inc. if it were a manufacturer located at a Wisconsin point transporting such divisible loads of boats overlength to the Wisconsin State line or to a point in Wisconsin?

A. Yes, if it were within the terms of the Industrial Interplant Permit under 348.27 (4).

Q. If the manufacturer of boats in a Wisconsin point sought the very same authorization as sought by the Indiana firm, would the permit be granted?

A. In other words the Indiana firm actually had his business, the manufacturer of boats, in Wisconsin, correct?

Q. Right.

A. Yes.

Q. The permit would then issue?

A. That's right.

Q. To that extent this would be an exception to the statement contained in Exhibit 5 with respect to the effect of the policy as between Wisconsin and non-Wisconsin residents?

A. Um-hum.

Q. Yes?

A. Yes." (A. 257-258)

Defendants' Brief in the lower Court conceded that such permits were only granted to Wisconsin industries or their agents (Defendants' District Court Brief, p. 7).

2. Exemptions to Wisconsin's Regulatory Scheme Are Designed to Meet the Needs of Local Commerce, But Not the Needs of Interstate Commerce.

Wisconsin's regulatory scheme is also discriminatory in a more subtle fashion. Where the limits have restricted or constrained Wisconsin industries, an exemption has been granted.²⁹ Wisconsin is a major producer of automobiles, automobiles may be transported in 65' trucks; Wisconsin is a major dairy state, the dairy industry benefits from twin tank trucks; Wisconsin has an important paper industry, the paper industry benefits from exemptions for the hauling of pulpwood. Wisconsin balances the economic and political importance of the local industry with the state's desire in maintaining its regulatory

²⁹Usage of those exemptions by Wisconsin industry is large. June 1st, 1975 figures (which do not include the new dairy exemption and the expanded agricultural implement exemption) showed a total of 12,168 general permits in force (A. 172-182). In 1972, the State estimated there were a total of approximately 38,000 single trip permits (A. 263). In 1975, 3,077 of the general permits were for 65 foot automobile transporters (A. 179). One company with a fleet of only 52 automobile transporters operated 6,376,305 miles in Wisconsin in 1974 (A. 275).

scheme. The exemptions created may apply to both interstate and local commerce, but the exemptions are tailored to Wisconsin's industry, and national commerce is benefitted only to the extent that its industries and patterns of trade duplicate Wisconsin's.³⁰ It is an equality akin to that of requiring all people to wear size nine shoes; comfortable for some, but binding on others.

³⁰That the resultant exemptions are biased is demonstrated by the following table which shows the proportion of Wisconsin's total manufacturing shipments which are produced by the major Wisconsin industries granted or benefiting from exemptions other than interplant permits:

	% of Value of Wisconsin Manufacturing Shipments
Motor vehicles and equipment (65' motor vehicle transporters)	11.13
Mobile homes and Prefabricated Wood Buildings (overlength and overwidth permits)60
Dairy Products (55' twin trailer tank trucks for milk, the raw material in dairy products)	9.88
Paper and allied products (beneficiaries of overlength, overwidth, and overweight permits for pulpwood, the raw material in paper manufacture)	9.29
Farm Equipment (exemption for overlength loads of implements)	1.88
TOTAL	32.78

Thus a total of approximately 32% of Wisconsin's manufacturing shipments are possibly benefited by exemptions as to the size or type of vehicles permitted. The Wisconsin "bias" in exemptions can be seen by the fact that nationally these possibly benefited industry groups create only 18% of all manufacturing shipments. (Data extracted from *1972 Census of Manufacturers*, U.S. Census Bureau).

Defendants in their Lower Court brief conceded that Wisconsin had fashioned its exemptions to benefit industries important to Wisconsin, arguing that the promotion of local industries was a proper exercise of the State's police power (Defendant's Brief pp. 8-10).

This subtle discriminatory pattern is reflected not only in exemptions to the weight and size limits tailored for Wisconsin's industries, but in the specific prohibition of twin trailers. The advantages of twin trailers are of principal importance to interstate general commodity carriers³¹ (A. 323-324). Wisconsin's prohibition on twin trailers thus burdens interstate commerce while imposing only slight burdens on local commerce. Because interstate rates are regulated by the Interstate Commerce Commission and are set on a regional basis, Wisconsin shippers benefit from the economic advantages of twin trailers permitted in other states, while shippers in other states must pay the extra costs of Wisconsin's ban (A. 351-359).

Such subtle discrimination is generally beyond the reach of the Fourteenth Amendment, but it is not and should not be beyond the reach of the commerce clause. This Court has held that the commerce clause forbids both discrimination which is blatant and that which is the result of a facially neutral proscription:

"The commerce clause forbids discrimination, whether forthright or ingenious. In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce." *Best & Co. v. Maxwell*, 311 U.S. 454, 455-456 (1940).

If such subtle discrimination were permissible, each state could, and given the practicalities of politics, would, legislate so as to provide exemptions for its local industries from its general regulations of commerce. The result

³¹The advantages of twin trailers are discussed at pp. 29-34, *infra*. Many of these advantages, such as the ability to consolidate freight for long distance movement, are of only limited utility to local intrastate carriers.

would be to rekindle economic rivalry and animosity among the states, and, in the end, to divide a national economy into fifty individual economies.

C. WISCONSIN'S PROHIBITION OF TWIN TRAILERS IMPOSES A HEAVY BURDEN ON INTERSTATE COMMERCE BY DISRUPTING AND FRAGMENTING A NATIONAL TRANSPORTATION SYSTEM.

1. Transportation Systems Are Peculiarly Vulnerable to Burdens Imposed by Varying State Regulation.

The second recurring statement contained in the commerce clause cases, regardless of the standard used, is that protection is necessary from individual state regulation in the field of transportation. The interstate transportation of goods is at the core of the protection of the commerce clause.³² Moreover, interstate transportation of goods is simultaneously an area of commerce where the need for regulation is most compelling, and the effects of contradictory and disjointed regulation most disastrous.

This Court has long recognized the destructive effect of conflicting regulation on transportation. As each method of interstate transportation became important to the nation's economy the Court extended to it the protection of the commerce clause from burdensome regulation by the individual states. *Gibbons vs. Ogden*, 22 U.S. (9 Wheat.)

³²"[T]his power [over shipping] has been exercised from the commencement of the government, has been exercised with the consent of all, and has been understood by all to be a commercial regulation. All America understands, and has uniformly understood, the word "commerce," to comprehend navigation." *Gibbons vs. Ogden*, 22 U.S. (9 Wheat.) 1, 190 (1824).

1 (1824), the first important commerce clause case, recognized the embarrassment that our waterborne commerce would be subjected to by conflicting federal and state laws. A similar protection was afforded to railroads when they developed into a national system of transportation:

"By the slightest attention to the matter it will be readily seen that the circumstances under which a bridge may be authorized across a navigable stream within the limits of a State for the use of a public highway, and the local rules which shall govern the conduct of the pilots of each of the various harbors of the coasts of the United States, depend upon principles far more limited in their application and importance than those which should regulate the transportation of persons and property across the half or the whole of the continent, over the territory of half a dozen States, through which they are carried without change of car or breaking bulk.

. . .

"But when it is attempted to apply to transportation through an entire series of States a principal of this kind [state regulation], and each one of the States shall attempt to establish its own rates of transportation, own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the freedom of commerce among the States and upon the transit of goods through those States cannot be overestimated. That this species of regulation is one which must be, if established at all, of a general and national character, and cannot be safely and wisely remitted to local rules and local regulations, we think is clear from what has already been said. And if it be a regulation of commerce, as we think we have demonstrated it is, and as the Illinois Court concedes it to be, it must be of that national character, and the regulation can only appropriately exist by general rules and principles, which demand that it should be done by the Congress of the United States under the commerce clause of the Constitution." *Wabash, St. Louis and Pacific Railway Co. v. Illinois*, 118 U.S. 557, 596 (1886).

We respectfully submit to the Court that motor carriers now form another national system of commerce. Certainly, that has been the thrust of federal regulation of rates, and the intent of Congress:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act . . . to the end of developing, coordinating, and preserving a *national transportation system* by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, . . ." National Transportation Policy of 1940, 54 Stat. 899 (Emphasis added)

Wisconsin's refusal to permit twin trailers on the Interstate Highways in Wisconsin imposes a heavy and unnecessary burden on the national motor transportation system. Because of the interstate nature of the system and the geographic location of Wisconsin, its prohibition disrupts and fragments the entire system.³³

2. Wisconsin's Prohibition Imposes Direct and Indirect Burdens on Interstate Commerce.

³³Other states ban twin trailers; but these states, with the exception of Iowa, are contiguous and are located in the Southeast or Eastern Seaboard. They can be adjusted to on a regional basis. Wisconsin's geographic location and its location on Interstate 90 and 94 make it an island blocking the commercial routes from the industrial Midwest to the Pacific Northwest. The presence of the Great Lakes and the location of the Interstate Highways prevents any easy routing around Wisconsin. The result is a massive disruption and fragmentation of the system.

Iowa, which permits 60 foot twin trailers, enacted administrative regulations to permit 65 foot twin trailers throughout the state. These regulations were recently struck down as improperly promulgated, *Motor Club of Iowa v. Department of Transportation et al*, 251 N.W.2d, 510 (March 17, 1977). Iowa's ban has never had the same deleterious effect that Wisconsin's ban has had. Iowa through traffic can easily be rerouted through Missouri; Wisconsin's traffic cannot because of distance.

To understand the nature of that burden and why it causes disruption, it is first necessary to understand the operations of the system. General commodity carriage is one part of the motor transportation system. Appellant Consolidated's operations are typical of the operations of general commodity carriers. A general commodity carrier does not usually provide individual trucks to its customers for their use. Rather it normally picks up and transports a variety of shipments in one vehicle to destinations throughout its route, or through the process of interlining or interchanging trailers with other general commodity carriers, to points outside its route structure. The average weight of a shipment on Appellant Consolidated's routes in 1974 was 992 pounds (A. 306), or less than 3% of the total weight of an average vehicle load (A. 323).

General commodity carriers serve most industries and localities, but they are particularly important to small businesses and small communities which often have no other practical means of shipping and receiving goods (A. 361-362). For example, Consolidated operates terminals in towns as small as Fargo, North Dakota, population 53,365, which in turn serves towns as small as Zap and Adams, North Dakota, population 271 and 264 respectively (A. 328). Appellant Raymond picks up and delivers the production of small local industries such as Franklin Manufacturing (freezers and refrigerators) in St. Cloud, Minnesota and Medallion Kitchens (kitchen cabinets) in Fergus Falls, Minnesota (A. 378).

The principal problems in the operation of general commodity carriers are those created by need to repeatedly consolidate shipments for movement (A. 318). The basic pattern for movement of an average (small or less-than-truckload) shipment, is as follows:

1. Pick up from the shipper;
2. Consolidate at the origin terminal with other shipments moving in the same general direction;
3. Dispatch the consolidated trailer to a "break-bulk" terminal;
4. Unload at the intermediate or "break-bulk" terminal and reconsolidate the shipment with others moving to the immediate area of the destination terminal;
5. Dispatch the over-the-road trailer to the destination terminal;
6. Unload the over-the-road trailer and reconsolidate with shipments for a logical local delivery service; and
7. Deliver the shipment to the consignee.

Where consolidation requires removal of freight from one trailer, sorting, and reloading of freight into another trailer, there are significant delays, costs, and exposure of freight to loss or damage. This "cross-dock handling" is the single most costly element in general commodity carriers' operations (A. 334).

Pick up and delivery of freight is frequently done by straight trucks because of small load size, loading space restrictions, and location of shippers in congested downtown areas. Use of straight trucks adds another layer of equipment to the carriers' operations and necessitates unloading of cargo from the straight truck and reloading into long distance equipment.

Twin trailers offer significant advantages for pick up and delivery of freight. A twin trailer combination can be separated and a single twenty-seven foot trailer and tractor dispatched in place of a straight truck for pick up and delivery. In many instances cross-dock handling can be reduced, by using the same trailer with some of its

original freight for over the road movement.³⁴

Similarly, twin trailers facilitate the consolidation of freight for long distance movement. The optimum for small shipment handling is direct daily dispatch between the origin terminal and destination terminal. Because the optimum is never achieved on all freight, freight must often be consolidated at intermediate or break-bulk terminals for over-the-road movement and distribution. Each consolidation typically requires cross-dock handling. Economics dictate that all of the terminal-to-terminal movements be made in equipment loaded as fully as possible, while the requirements of timely service dictate that shipments be dispatched as promptly as possible (A. 318, 337-338).

In many cases twin trailers eliminate movement of shipments through intermediate terminals. From Consolidated's analyses the threshold factor for direct daily trailer loadings between origin and destination terminals is reduced from the 30,000 pounds per day required with use of semi-trailers, to 15,000 pounds per day with use of twin trailers (A. 337-338). A dispatcher in Minneapolis with 18,000 pounds of freight for Fargo and 18,000 pounds of freight for Seattle may dispatch a twin trailer combination, drop one trailer off in Fargo for local delivery, attach another westbound trailer there and continue on to Seattle. With conventional semi-trailers the dispatcher would have to choose among (1) sending both shipments

³⁴In some cases semi-trailers are used for pickup and delivery instead of straight trucks. Substitution of twin trailers for semis permits more rapid and frequent service because each individual twin trailer unit can be dropped off and loaded or unloaded separately without delaying the entire vehicle combination (A. 370-371).

on a semi-trailer, accepting the necessity for unloading the Fargo shipment and reloading the semi; (2) sending two partially laden semi-trailers, accepting the increased cost of shipment; or (3) waiting until he had accumulated sufficient freight to ship a fully laden semi-trailer to each destination, accepting the increased delay.

An actual example illustrates the advantages of twin trailers. On September 16, 1975, the Badger Meter Company asked Consolidated to pick up and ship 9,125 pounds of water meters from Milwaukee to Nogales, Arizona. The Milwaukee dispatcher chose to use a twin trailer for this shipment because Milwaukee's close proximity to the Illinois border (41 miles) and the advantages of twin trailers on the remainder of the journey made use of the shuttle operation and staging area in Zion, Illinois the best alternative.³⁵ Consolidated dispatched a single twin trailer unit to Badger where the water meters were loaded. The driver of the single unit then picked up eight small shipments from other Milwaukee area businesses. These eight shipments were unloaded at the Milwaukee terminal and freight bound for Tucson, Arizona placed with the water meters. Simultaneously the Milwaukee terminal loaded another twin trailer with assorted shipments destined for Los Angeles. Because of Wisconsin's ban, tractors were attached to each twin trailer unit and they were individually hauled to Consolidated's staging area across the Wisconsin state line. There the extra tractor was removed and the two units then hauled in combination to Phoenix, Arizona. In Phoenix, the Los Angeles bound twin trailer

³⁵The dispatcher could have chosen to use a semi-trailer for the shipment. Dispatchers in Minneapolis and Detroit, for instance, typically are forced to use semi-trailer equipment for shipments between those points because of the lengthy shuttle or diversion that would be necessary if twin trailers were used (A. 311-313).

was matched with a twin trailer from Kansas City and the two dispatched to Los Angeles. The twin trailer containing the water meters was combined with another trailer from Long Beach, California, and the two dispatched to Tucson. In Tucson, the freight bound for Tucson was unloaded from the trailer, and the trailer with the water meters was interchanged with another carrier who served Nogales. The water meters arrived without ever having been removed from the original twin trailer. Had the Milwaukee shipments not been made in twin trailers, neither would have been dispatched on September 16 and both would have required a minimum of two additional in transit cross-dock handlings (A. 345-349).

Twin trailers offer other advantages outside of reduction of cross-dock handling and increased flexibility in scheduling. The freight shipped by general commodity carriers is bulky and of low density, and becoming more so because of lighter packaging materials (A. 89-90, 323). Carriers fill the available volume of their vehicles long before they approach the weight limits imposed by the states (A. 323). Because of their added volume, twin-trailer combinations can carry approximately thirty-four percent more cargo than a conventional semi-trailer (A. 373). Thus, fewer vehicles are needed to transport the same amount of cargo, resulting in equipment savings, lessened highway congestion (A. 125, 183-184, 374), and signifi-

cant fuel savings.³⁶ Moreover, because of easier access, two twin trailers with their increased cargo capacity can be unloaded in the same time as one full sized semi-trailer (A. 128-129, 334).

Wisconsin's refusal to permit twin trailers burdens the interstate motor transportation system directly. Carriers such as Consolidated must route their traffic around Wisconsin, maintain staging areas where twin trailer units may be divided for transport through Wisconsin, and use semi-trailer equipment for routes only partially in Wisconsin. These direct burdens are reflected in delays in transit and higher operating costs.³⁷ But because general commodity carriage is a system, indirect costs are perhaps far larger.

³⁶The Federal Energy Administration has concluded that twin trailers offer fuel savings of 20% over semi-trailers for the low density loads transported by common carriers of general commodities (A. 279-286). In regard to Wisconsin's ban, the FEA stated:

[FEA's] analysis shows significant potential for energy conservation through the utilization of twin-trailers. Motor carriers of general commodity freight will be able to travel across Wisconsin by direct and efficient routings and integrate and utilize uniform equipment in their operations East and West of Wisconsin. Further, the ability to use twin-trailers on the interstate routes going through Wisconsin will allow the motor carriers of interstate and intrastate commerce to utilize their most energy efficient equipment, reduce their costs, and eliminate unnecessary unloadings and reloadings at the Wisconsin border. In addition, containerized freight which is particularly adaptable to the utilization of twin-trailer services will be attracted to energy efficient barge transportation through the Port of Milwaukee (A. 285-286).

³⁷The record shows Consolidated's operating costs were increased by \$2,050,081 in 1974 by the direct burdens imposed by the Wisconsin ban. No attempt was made to estimate the indirect costs. Appellant Raymond, whose sole contact with Wisconsin is the through shipment of freight over I-90 and I-94, had added costs for labor and fuel alone of \$165,109 in 1974 (A. 375, Appendix "F" to Deposition of Arnold Foslien).

The most important of these is equipment incompatibility. Twin trailers use single drive axle tractors; semi-trailers use tandem axle tractors. Whereas carriers normally shift equipment between routes as fluctuations in traffic occur, semi-trailer equipment used on the routes through Wisconsin is incompatible with the equipment used on adjoining routes and cannot be shifted (A. 344-345, 378). In terms of absolute magnitude the problem is greatest for Appellant Consolidated. Scheduling and coordination problems which are already complex because of Consolidated's size become more so by the use of incompatible equipment in the same region. In terms of impact on the carrier, however, the problem is probably greater for Appellant Raymond because of Raymond's small size and the geography of its routes. The equipment which it uses in Minnesota and Illinois is incompatible with the equipment it must use to transport goods between Illinois and Minnesota (A. 371-372, 378-379). The difficulties are obvious.

The possibility of interchanging equipment between carriers is eliminated when incompatible equipment must be used. When Consolidated shipped the water meters to Nogales, Arizona, it transferred the twin trailer to another carrier with suitable equipment who then made the final delivery. Had the equipment of the carriers been incompatible, that interchange would be impossible. In 1974 35.7% of Consolidated's shipments were interlined or interchanged with other carriers (A. 322). Raymond routinely uses local cartage operators who operate twin trailer equipment to make final delivery of its freight from twin trailers in areas such as Little Falls, Minnesota (A. 370).

None of these burdens, direct or indirect, fall exclusively or even principally on Wisconsin shippers. Because rates are set by the Interstate Commerce Commission on a regional basis, increased costs are shared by shippers in many states (A. 351-359). All shippers whose most direct routing is through Wisconsin suffer delays because of Wisconsin's ban, and all of the shippers in the region are affected by the carriers' inability to shift incompatible equipment between routes.

D. WISCONSIN'S PROHIBITION DOES NOT PROMOTE SAFETY.

The balancing test of *Pike* requires that such heavy burdens on interstate commerce be justified by strong legitimate local interests for the state regulation to be constitutional. In a Pretrial Conference Order the District Court directed the Defendants to file an amended answer setting forth "... every justification for the challenged regulation, such as safety, for example, upon which defendants will rely..." (A. 25). Defendants did so, and advanced safety as the sole local interest to be served, conceding that twin trailers did not cause increased road wear or damage (A. 18, 24, 25-29).

The evidence compiled on safety was voluminous and comprehensive. Expert testimony was introduced on every aspect of safety. The test results and expert opinion on such matters as braking distance and characteristics (A. 36, 61, 67, 96-97, 123-125), tendency to jackknife (A. 102, 121-124, 142-143, 147), maneuverability (A. 36, 47-48, 80-81, 141), splash and spray characteristics (A. 72-73, 84-85, 109-120, 134-137), stability (A. 36, 49), and tracking characteristics (A. 59-60, 65, 92, 120-121, 141, 162) were adduced. The tests had been conducted for on-

going studies by the government or other institutions; none were undertaken for this case. In each category, there was expert testimony that twin trailers were as safe or safer than semi-trailers. In many areas of comparison, such as maneuverability, stability, and splash and spray characteristics, twin trailers proved superior to semi-trailers. In no category were they rated worse.³⁶ Every expert who had an opinion came to the overall conclusion that twin trailers were as safe or safer than semi-trailers (A. 34, 52-53, 62, 64-65, 70-71, 75-76, 82-84, 99, 141).

The expert opinions and test results were supported by actual experience with twin trailers. Affidavits or testimony were introduced from highway officials in many of the states located along the I-94 route: Michigan, Minnesota, South Dakota, North Dakota, Montana, Wyoming, Idaho, Oregon and Washington (A. 63-73, 154-167). Additional affidavits were obtained from other states with severe weather and terrain problems, such as Colorado (A. 167). All of these states have actual experience with twin trailer operations. Representative comments include:

Dennis Eisnach, Superintendent, South Dakota Highway Patrol:

³⁶In order to evaluate performance characteristics, Appellants and Defendants alike have compared twin trailer combinations to the 55-foot semi-trailers presently utilized in Wisconsin. This comparison is not done to denigrate the impressive safety record of semi-trailers, for as California Highway Patrol Commissioner A.S. Cooper testified:

"Both are extremely safe vehicles and consistently among the vehicle types with the lowest accident rates. The accident rates for both doubles and semis are much lower than other trucks and the auto." (A. 62)

Nevertheless, the semi does provide a recognizable standard by which other vehicles can be compared (A. 114). The semi also represents a degree of operational safety clearly accepted in Wisconsin.

"2. The accident experience with 65-foot double bottom trucks on South Dakota highways indicates that these units have not caused any safety hazard.

3. A summary review of our accident record shows no difference in the over-all accident experience with 65-foot doubles as compared with 55-foot tractor semi trailer units.

4. The South Dakota Highway Patrol has not received any motorist complaints related to the twin trailer configuration of these trucks." (A. 156-157).

Robert Hamilton, Permit Director, Oregon State Highway Department:

"2. Sixty-five foot double bottom trucks have been permitted on Oregon highways since 1951. They are currently allowed to traverse 97% of the State highway system, which includes two lane, as well as four lane highways. Sixty-five foot doubles are allowed on all Interstate roadways in Oregon.

3. The use of double bottom trucks has caused no safety problem in Oregon.

4. During his (Hamilton's) five years as Permit Director, no citizen complaints whatsoever concerning double bottom trucks have been brought to his attention or filed with this office.

5. The double bottom truck is an integral part of truck transportation in Oregon." (A. 164-166).

The testimony of two officials was particularly compelling, because in both instances they initially opposed the use of twin trailers. Ernest Cox, Former Deputy Director of the Bureau of Motor Carrier Safety, United States Department of Transportation, testified that he had opposed amending Department regulations to permit carriage of explosives in twin trailers because he was skeptical of twin trailer stability. After a study of accident reports and accident experience and field observations of twin trailers by D.O.T. staff, he changed his initial opinion, and recommended that twin trailers having a

wheel base of at least 184 inches be permitted to carry explosives (A. 46-49).³⁹ Similarly, Claud McCammet, former Safety Director of the Kansas State Highway Commission was opposed to twin trailers until his office conducted extensive studies of them. His eventual conclusion was that twin trailers were safer than conventional semitrailers (A. 78-83).

These observations were reinforced by the two major statistical studies conducted of twin trailer safety. The Bureau of Motor Carrier Safety, United States Department of Transportation, conducted a survey covering a five-year period:

"The data shows that the twin trailers are safer than conventional semitrailers after computing the number of accidents per 100,000 (miles), the number of injuries per 100,000 miles and the number of fatalities per 100,000 miles, and estimates of the property damage, injuries and fatalities on a per-accident basis.

In all the years covered by this data, the twin-trailer operations are significantly safer." (A. 35)

Similarly, a California State Highway Patrol study of 31,883 accidents in California in 1972 found:

"Doubles and semis both had an accident rate of .5.

Table 2 shows that only the commercial bus accident rate, .4 fatal and injury accidents per million miles of travel, was lower than the .5 rate established by tractor-semitrailers and doubles.

Other trucks and all other motor vehicles trailed at .7. Thus, in terms of accident rates, doubles appear to be one of the safest

³⁹The 184 inch wheelbase trailers referred to are the 27 foot twin trailers at issue in this case (A. 51).

vehicles on the road. They are at least as safe as the tractor-semitrailer in this respect." (A. 57)

The California Highway Patrol compared its accident data with that of two twin trailer users, including Consolidated, for control purposes and concluded:

"(T)he conclusions drawn regarding the accident frequency of doubles and tractor-semitrailer appear to have been confirmed. Although the magnitudes differed, the ordering remained constant from source to source. In each case, the statistics indicate that the doubles are as safe as tractor-semitrailer. In fact, they indicate a lower accident rate among doubles than among tractor-semitrailer." (A. 57-58)

Despite the claim that the state prohibited twin trailers because of safety, the state could offer no evidence that twin trailers were unsafe. Defendant Robert T. Huber, Chairman of the Wisconsin Highway Commission testified that the Commission had not denied plaintiffs' request for permits on the basis of safety:

Q. Well, is it a fair statement of your testimony that in denying the plaintiffs' permit the Highway Commission took into account factors other than merely those which the Highway Commission might deem necessary for the safety of travel and the protection of the highways?

A. I think I answered that before by saying that legislative direction is one of the major factors in our decision.

Q. The Highway Commission itself would not have determined that granting of the permits posed any danger whatsoever to the safety of travel?

A. I'm not prepared to make a statement relative to the safety of these vehicles. I don't think I would comment on it at this time." (A. 250-251)

James Karns, former Motor Vehicle Commissioner for the State of Wisconsin testified that as Motor Vehicle

Commissioner he had conducted a survey of twin trailer safety experience in other states and had concluded that there was no reason not to permit twin trailer operation in Wisconsin (A. 74-76).

The sole witness who raised any question as to the safety of twin trailers was Dr. L. S. Robertson. Dr. Robertson testified that his studies showed a higher rate of fatalities for passenger car occupants in collisions between trucks and passenger cars than accidents between passenger cars. His studies, however, did not differentiate between types of trucks, the relative frequency of accidents based on miles driven, or the type of highways used. He stated that he had no opinion as to the relative safety of twin trailers and semi-trailers (A. 154).

The evidence on safety demonstrates conclusively that Wisconsin's refusal to permit twin trailers on Interstate Highways does not promote safety, the sole legitimate local interest advanced.

E. THE LOWER COURT ERRED BY FAILING TO APPLY THE APPROPRIATE STANDARD.

1. The Lower Court Did Not Balance the Facts But Instead Relied Upon Presumptions from Cases Decided Under Abandoned Standards.

The District Court in determining whether or not Wisconsin's ban on twin trailers violated the commerce clause posited the *Pike* standard as the appropriate test. But it did not regard *Pike* as overruling a series of motor vehicle cases determined by this Court in the 1920's and 1930's under the now abandoned subject matter test of *Cooley v. Board of Wardens, supra*. Rather it relied upon

the findings and presumptions contained in the old motor vehicle cases to construct a syllogism.

The District Court's major premise was that non-discriminatory state motor vehicle regulations in the interest of safety were valid:

"This Court begins by recognizing that, absent national legislation precluding differing state policies concerning a particular aspect of interstate commerce, a state 'may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens.' *Sproles v. Binford*, 286 U.S. 374, 390 (1932), quoting *Morris v. DUBY*, 274 U.S. 135, 143 (1927)." (Jurisdictional Statement, p. 11a)

The minor premise was that Wisconsin's refusal to permit twin trailers on Interstate Highways was a regulation in the interest of safety. The record could not support the premise adequately; the sole safety hazard that the District

Court cited was that of additional delay in passing.⁴⁰ But the evidence in this case was largely immaterial to the District Court, for the same motor vehicle cases of the 1920's and 1930's provided a second presumption which the District Court felt bound by:

⁴⁰All of the expert testimony showed that there was no additional hazard to passing a twin trailer combination on Interstate Highways:

Fred J. Myers (Retired Chief Engineer, Western Highway Institute) concluded:

"I don't think it is of any importance on a multiple lane highway when the vehicles are traveling in the same direction." (A. 94)

Col. Crawford (Minnesota State Patrol) stated:

"You're really only talking about ten feet, you know, difference, and the passing time for that ten feet is not that significant." (A. 69)

Commissioner Cooper (California Highway Patrol) stated:

"Although passing time has not been measured by the California Highway Patrol, a study by the U.S. Department of Commerce [H.R. Doc. No. 354, 88th Cong., 2nd Sess. 93 (1964)] indicated that vehicles up to 75 feet would not have a significant effect upon the safety potential of the usual passing operations on a two-lane facility. As such, the time required to pass a 65-foot double would not create a more significant hazard than the time required to pass other trucks and buses." (A. 61)

Mr. Marshall (Minnesota Department of Highways) stated:

"We are talking ten foot longer length trailer, or total combination, and in passing we are talking probably a second or so, and I don't think — we haven't heard any complaints from the people on anything in this respect." (A. 72)

Mr. Sherard (Chief Engineer, Western Highway Institute) testified:

"Q. Do you have an opinion as to whether the additional 10 feet in length of a twin over the length of a semi, both operating on a four-lane divided interstate highway, constitutes a safety hazard?

A. I don't think it does.

Q. That is your opinion?

A. That is my opinion, that it doesn't. We are talking about an interstate highway?

Q. Right.

A. Four-lane divided highway?

Q. Correct . . ." (A. 128)

Moreover, the District Court's apprehension of an increased hazard to passing under adverse weather conditions was also contradicted by the record. The record shows that the splash and spray characteristics of twin trailers are unquestionably superior to that of semi-trailers. (A. 109-118, 134-137, 72-73, 84-85)

"The United States Supreme Court has on several occasions equated limitation on vehicle size to public safety. The opinions in these cases contain language which is quite broad; they demonstrate that for purposes of judicial review of state highway legislation, size restrictions might be deemed inherently tied to public safety . . ." citing *Morris v. Doby*, 274 U.S. 135 (1927); *Buck v. Kuykendall*, 267 U.S. 307 (1925); *Sproles v. Binford*, 286 U.S. 374 (1932), *Simpson v. Shepard* (The Minnesota Rate Cases) 230 U.S. 352 (1912) (Jurisdictional Statement, 15a)

If state regulation of motor vehicles in the interest of safety were valid, and regulations of size were inherently regulations for safety, the conclusion was inescapable: Wisconsin's prohibition of twin trailers was valid. The Court felt little need to consider the burden imposed on commerce:

"The burdens thereby imposed upon interstate commerce are not unconstitutional in scope or degree." (Jurisdictional Statement, p. 15a)

In relying upon the presumptions rather than examining the facts of the particular case, the District Court neglected the historical lesson that led to *Pike*. It was the failure of the fixed standards that led to acceptance of the balancing test. To now append to that balancing test, as part of the weighing process, presumptions from cases decided under an abandoned fixed standard is to combine the disadvantages of the balancing test with the disadvantages of the fixed standards. That is not the lesson of this Court:

"Adjudication entails 'emphasis upon the concrete elements of the situation that concerns both state and national interests. The particularities of a local statute touch its special aims and the scope of their fulfillment, the difficulties which it seeks to adjust, the price at which it does so . . . (P)ractical considerations, however screened by doctrine, underlie the resolution of conflicts between state and national power.' F. Frankfurter,

The Commerce Clause Under Marshall, Taney and Waite 33-34 (1937).

(I)t seems clear that those interferences (with interstate commerce) not deemed forbidden are to be sustained . . . because a consideration of all the facts and circumstances, such as the nature of the regulation, its function, the character of the business involved and the actual effect on flow of commerce, lead to the conclusion that the regulation concerns interests peculiarly local and does not infringe the national interest in maintaining the freedom of commerce across state lines. *Di Santo v. Pennsylvania*, 273 U.S. 34, 44, 71 L. Ed 524, 47 S. Ct 267 (1927) (Stone, J., dissenting)." *Great Atlantic and Pacific Tea Company v. Cottrell*, 424 U.S. 366, 372, f.n. 6 (1976)

The District Court similarly erred in finding the regulatory scheme to be nondiscriminatory. It recognized that the proper test to be applied was that of the practical effect of the regulation (Jurisdictional Statement, p. 8a). However, the test it apparently applied was that of whether the regulation was facially neutral and intended to gain local economic advantage:

"The record in this action does not reveal that by means of these facially neutral proscriptions the state of Wisconsin intentionally seeks to isolate local industry or agriculture from foreign competition." (Jurisdictional Statement, p. 10a)

More importantly, the Court's decision on discrimination was tainted by its acceptance of the erroneous presumption that vehicle size was inherently tied to safety. The Court believed that the presumption provided a rational basis that justified the discrimination whether challenged on Fourteenth Amendment grounds or commerce clause grounds (Jurisdictional Statement, p. 20a).

2. The Lower Court Erroneously Failed to Consider Whether Less Burdensome Alternatives Were Available to Wisconsin.

South Carolina Highway Department v. Barnwell Bros., 303 U.S. 177 (1938) led the District Court to one final error. Because *Barnwell* held motor vehicle regulation to be a subject area regulated by the state, the District Court regarded it as inappropriate for a federal court to consider less burdensome alternatives (Jurisdictional Statement, p. 12a, f.n. 10).

Such an approach, stemming from the subject matter test, is contrary to the approach required by *Pike*:

"If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved and on whether it could be promoted as well with a lesser impact on interstate activities." 397 U.S. at 142.

"Inquiry whether adequate and less burdensome alternatives exist is, of course, important in discharge of the Court's task of 'accommodation' of conflicting local and national interests, since any 'realistic' judgment" whether a given state action 'unreasonably' trespasses upon national interests must, of course, consider the 'consequences to the State if its action were disallowed.' Dowling, *Interstate Commerce and State Power*, 27 Va L Rev 1, 22 (1940)." *Great Atlantic and Pacific Tea Company v. Cottrell*, 424 U.S. 366, 373 (1976)

The District Court, as an aside, suggested that no less intrusive alternative than a general length limitation appeared possible (Jurisdictional Statement, p. 12a, f.n. 10). Such a less intrusive alternative is available however. Wisconsin already exempts certain uses by permit from its general limitation. Appellants do not seek a holding that the general limitation of vehicle length is invalid. They

seek to invalidate that part of the permit system which prevents their permit applications from being considered on an equal basis with other applications. Were it not for WIS. ADMIN. CODE §Hy 30.14(3)(a), Appellants could obtain permits allowing them to use twin trailers (A. 248). Those permits would designate the highways to be used and would be subject to the appropriate safety regulations contained in WIS. ADMIN. CODE §Hy 30.01.

A permit confined to the Interstate Highways and connecting roads, issued under the existing permit system, would retain the state's ability to regulate and control motor vehicles on local roads while removing from interstate commerce the principal burden upon it. Such an alternative is an appropriate alternative to the present flat prohibition of twin trailers from all highways in Wisconsin.

3. The District Court Was Misled by This Court's Decision in *Bibb v. Navajo Freight Lines, Inc.*

Though the District Court erred in applying the factual and legal presumptions of *Barnwell* and other cases of its period in its consideration under *Pike*, that error is in part attributable to this Court. In 1959 this Court held unconstitutional a state regulation of motor vehicles which unduly burdened interstate commerce, *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959). In doing so, however, this Court specifically denied that it was overruling *Barnwell*. The facts in *Bibb*, it suggested, were peculiar, and the result was to be considered as an aberration and not as the establishment of a new rule:

"This is one of those cases — few in number — where local safety measures that are nondiscriminatory place an unconstitutional burden on interstate commerce." 359 U.S. at 529.

We respectfully submit to the Court that *Bibb*⁴¹ was not an aberration. Its facts were and are typical, reflecting fundamental changes in the motor transportation industry since *Barnwell* was decided.

In 1938, when South Carolina limited the size of vehicles on its roads, the regulation was principally one of local commerce. Interstate motor transportation was in its infancy. In 1959, when *Bibb* was decided, interstate transportation had increased dramatically.⁴¹ A state regulation requiring a specific type of mudguard in Illinois, rather than being a regulation of local commerce with only minor effects on interstate commerce, affected numerous interstate carriers. This minor regulation had major effects throughout the motor transportation system causing delays and interfering with interchanging of equipment.

The character of the highways, an integral part of the motor transportation system, was also changing. Roads in 1938 were principally the creation of the state, largely financed by state money and constructed to varying state standards. They served principally as routes for local commerce.

Many roads are now major channels of interstate commerce. The Interstate Highway System, begun before

⁴¹On a ton-mile basis, motor carriage has increased from 40,000 million ton-miles in 1938 to 288,519 million ton-miles in 1959 and to 495,000 million ton-miles in 1974. *Fifty-Third, Seventy-Fourth, and Eighty-Ninth Annual Report to Congress of the Interstate Commerce Commission* (Government Printing Office, 1939, 1950, 1975).

In 1972, out of 19 broad commodity groupings, trucks were the predominant transportation means (over 50%) for 16 commodity groupings. Excluding private trucks, for hire motor carriers were predominant in 9 commodity groups, 1972 *Census of Transportation*, U.S. Bureau of the Census.

Bibb, is designed to provide a national and regional highway system. The Interstate System is principally funded by federal money, with routes subject to federal approval, and is constructed to uniform standards promulgated by the Secretary of Transportation.⁴²

Barnwell's statement that regulation of the use of highways was "peculiarly a local concern" was doubtful in 1959 and no longer true today as applied to all highways. Interstate Highways are not less suitable for varying local regulation because of federal financing and involvement, but are less suitable because they are an integral part of an interstate transportation system. One state's regulation of the use of that system in its jurisdiction automatically affects the use of the system in neighboring states. If *Bibb* failed to recognize the beginning of a fundamental change in 1959, the District Court in this case, by relying on *Bibb*'s refusal to overrule *Barnwell*, failed to recognize a fundamental change which is now largely completed and manifest.

Bibb also misled the District Court in respect to discrimination. In *Bibb* the Supreme Court determined that the Illinois regulation was nondiscriminatory. In so doing this Court considered not the effect of the regulation, but its form. The Illinois regulation on its face applied alike to local and interstate commerce. The effect on local commerce, however, was minor, merely requiring permanent substitution of one type of mudguard for another, whereas the effect on interstate commerce

⁴²23 U.S.C. §§101-109.

Interstate routes are selected so as to connect as directly as practicable, "the principal metropolitan areas, cities, and industrial centers . . . and to connect . . . with routes of continental importance in the Dominion of Canada and the Republic of Mexico" 23 U.S.C. §103(e)(1).

was major. Rather than requiring a single change of equipment, mudguard types would have to be substituted each time the interstate carrier crossed the border. The inequality in burden, and thus in the practical effect of the regulation, should have been determined to be discriminatory under the commerce clause.

Such an interpretation of commerce clause discrimination is not novel:

"... a statute may, upon its face, apply equally to the people of all the States, and yet be a regulation of interstate commerce which a State may not establish. A burden imposed by a State upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all states, including the people of the State enacting such statute." *Minnesota v. Barber*, 136 U.S. 313, 326 (1890).

In *Barnwell* the Court believed that undue burdens on interstate commerce could be prohibited by the political mechanism so long as the statute was non-discriminatory:

"The present regulations, or any others of like purpose, if they are to accomplish their end, must be applied alike to interstate and intrastate traffic both moving in large volume over the highways. The fact that they affect alike shippers in interstate and intrastate commerce ... is a safeguard against their abuse." 303 U.S. at 187.

For such a theory to work, however, the burdens imposed by the regulation on local and interstate commerce must be equal. The test for discrimination must focus on the effects of the regulation on interstate and local commerce, not on whether it is facially neutral. If the effects of regulation on interstate and local commerce are not similar, then there will be no domestic political pressure to relieve unreasonable burdens on commerce.

Such is the case here. Wisconsin's prohibition of twin trailers burdens principally interstate general commodity carriers for whom twin trailers are the industry standard. Local motor carriage does not suffer a substantial burden and thus has no reason to seek legislative change. Nor are shippers in Wisconsin who use interstate general commodity carriers significantly burdened by the ban. Shipping rates are set by the Interstate Commerce Commission on a regional basis, spreading the cost burden over many states.

VIII. CONCLUSION

The facts of this case are not substantially in controversy. The principal question is the legal standard that should be applied to those facts. *Pike v. Bruce Church*, *supra*, established a general standard applicable to all commerce clause cases. Under that standard Wisconsin's prohibition of twin trailers is unconstitutional, for it imposes a heavy burden on interstate commerce, serves no legitimate local interest, and discriminates by placing differing burdens on interstate commerce and local commerce.

The standard applied by the District Court, that of *South Carolina Highway Dep't. v. Barnwell*, *supra*, declared that regulation of motor vehicles was a matter reserved to the states free from the restraints imposed by the commerce clause other than the prohibition on discrimination. *Barnwell* so concluded on the basis of the locality test in *Cooley v. Board of Wardens*, *supra*. The policy reasons of *Cooley* can, however, no longer be advanced as support for *Barnwell*. The changing nature of motor transportation in this country has removed motor

transportation from those subjects solely suited for local regulation.

Wisconsin's prohibition of twin trailers is not a matter involving only the accommodation of local interests. The national interest is directly involved in Wisconsin's ban. It is a national transportation system which is disrupted, a national energy supply which is imprudently consumed, and a national highway system which is regulated. The effects of Wisconsin's prohibition are not confined to Wisconsin. Delays in service, decreased availability of service, and increased costs are caused in other states.

To apply *Barnwell* to such circumstances is to engage in circular reasoning: the burden on interstate commerce need not be considered, because the subject matter is local in character and it is local in character because there is no national interest involved. It is a species of reasoning which forecloses judicial application of the commerce clause, even though the policy factors for that application are present.

This Court has repeatedly recognized that the commerce clause, by itself, without legislative action protects interstate commerce from burdensome regulation by the state. If it did not, Congressional action would be the sole available protection. That legislative protection, however, frequently achieves too little or too much:

"There is no assurance that the commerce problem would be as well handled by Congress alone, as where both congress and courts participate in its solution . . . Congress is a big and heavy machine to set in motion and its progress is sometimes impeded even when national interests of the highest order are at stake.

. . .

Even if Congress should accept the task it would not find it an easy one. It would have to labor with much of the same evidence . . . and perhaps more often than not the solution would have to be stated in general terms." Dowling, *Interstate Commerce and State Power — Revised Version*, 27 Va.L. Rev. 1, 23 (1940).

If Congress does not act, significant restrictions on national commerce go unchecked. If it does act, the necessity of applying general rules to all the states risks the failure to properly recognize significant local interests. All too often the replacement of local regulation by federal legislation engenders as many problems as it solves.

The balancing test of *Pike* permits a more individual accommodation of the policy interests involved. *Pike*, applied on a case by case basis, permits a precise balancing of state and federal claims which can never be achieved by application of a general rule.

"[I]n areas where activities of legitimate local concern overlap with the national interest expressed by the Commerce Clause — where local and national powers are concurrent — the Court in absence of congressional guidance is called upon to make 'delicate adjustment of the conflicting state and federal claims,' *H.P. Hood & Sons, Inc. v. DuMond*, supra, at 553, 93 L.Ed. 865, 69 S.Ct. 657 (Black, J., dissenting), thereby attempting 'the necessary accommodation between local needs and the over-riding requirement of freedom for the national commerce,' *Freeman v. Hewit*, supra, at 253, 91 L. Ed. 265, 67 S.Ct. 274." *Great Atlantic and Pacific Tea Company v. Cottrell*, supra, at 371

Pike permits consideration of the national interest; it does not require that the motor vehicle regulations by the fifty states be replaced by a continuing judicial supervision. The presumption of validity which attaches to any statute ensures restraint on the part of the courts. Only in those few situations where the state regulation burdens

commerce heavily and serves safety or other legitimate local interests only minimally, does *Pike* require the courts to hold the state regulation invalid.

When the facts of this case are weighed under the *Pike* standard it is clear that Wisconsin's regulation violates the commerce clause. The facts of this case are strikingly similar to those in *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945). In that case this Court invalidated an Arizona statute limiting the length of trains. The state regulation forced the railroads to operate yards at the Arizona borders where train size was reduced, or to run shorter trains in other states. The alleged safety interest was shown to be slight or non-existent because the increased number of trains necessary compensated for any improvement in the safety of one train.

"We think, as the trial court found, that the Arizona Train Limit Law, viewed as a safety measure, affords at most slight and dubious advantage, if any, over unregulated train lengths, because it results in an increase in the number of trains and train operations and the consequent increase in train accidents of a character generally more severe than those due to slack action. Its undoubted effect on the commerce is the regulation, without securing uniformity, of the length of trains operated in interstate commerce, which lack is itself a primary cause of preventing the free flow of commerce by delaying it and by substantially increasing its cost and impairing its efficiency. In these respects the case differs from those where a state, by regulatory measures affecting the commerce, has removed or reduced safety hazards without substantial interference with the interstate movement of trains." *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 779 (1945).

Though *Southern Pacific* contrasted train regulation with motor vehicle regulation, repeating the holding of *Barnwell* that regulation of motor vehicles was a local concern, the presence in this case of the same interests and

burdens as in *Southern Pacific* suggests that the same balancing test should be applied.

The case differs from *Southern Pacific* in two respects. In *Southern Pacific* it was necessary to invalidate all state regulation of train length. Here, because of the Wisconsin permit system, a reasonable alternative exists which still allows the state to regulate the use of its highways generally, while accommodating the national interest by permitting twin trailer operations on designated Interstate Highways and connecting roads only. Such an accommodation of the national interest and local interest is the type of "delicate adjustment" which may be made under *Pike*.

In *Southern Pacific* there was no discrimination between interstate and local commerce. The Wisconsin regulatory scheme does discriminate. That discrimination is a violation of the Fourteenth Amendment and of the commerce clause which, under all standards, has been held to independently forbid discrimination.

Failure to recognize the national interests involved or the pernicious effects of discrimination by the states is to invite fragmentation of our economic union.

"Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation, that no home embargoes will withhold his export, and no foreign state will by customs duties or regulations exclude them. Likewise, every consumer may look to the free competi-

tion from every producing area in the Nation to protect him from exploitation by any. Such was the vision of the Founders; such has been the doctrine of this Court which has given it reality." *H.P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 539 (1949).

Respectfully Submitted,

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APPENDIX

TEXT OF STATUTES

348.05 Width of vehicles. (1) No person without a permit therefor, shall operate on a highway any vehicle having a total width in excess of 8 feet, except as otherwise provided in this section.

(2) The following vehicles may be operated without a permit for excessive width if the total outside width does not exceed the indicated limitations:

* * *

(k) 9 feet for loads of tie logs, tie slabs and veneer logs, provided that no part of the load shall extend more than 6 inches beyond the fender line on the left side of the vehicle or extend more than 10 inches beyond the fender line on the right side of the vehicle. The term "fender line" as used herein means as defined in s. 348.09. This paragraph shall not be applicable to transport on highways designated as parts of the national system of interstate and defense highways pursuant to s. 84.29. The exemptions provided by this paragraph shall apply only to single and tandem axle trucks.

(l) Ten feet for loads of hay in bales from the point of production to drying or milling plants or farms if the size of the bales is not more than 5 feet in length and not more than 6 feet in diameter. This paragraph shall not be applicable to transport on highways designated as parts of the national system of interstate and defense highways under s. 84.29.

* * *

2a

348.06 Height of vehicles. (1) No person, without a permit therefor, shall operate on a highway any motor vehicle, mobile home, trailer or semitrailer having an over-all height in excess of 13½ feet, except as otherwise provided in sub. (2).

(2) The following vehicles may be operated without a permit for excessive height if the over-all height does not exceed the indicated limitations:

(a) No limitation for implements of husbandry temporarily operated upon a highway;

* * *

348.07 Length of vehicles. (1) No person, without a permit therefor, shall operate on a highway any single vehicle with an over-all length in excess of 35 feet or any combination of 2 vehicles with an over-all length in excess of 55 feet, except as otherwise provided in subs. (2) and (2a).

(2) The following vehicles may be operated without a permit for excessive length if the over-all length does not exceed the indicated limitations:

* * *

(d) 60 feet for a combination of mobile home and towing vehicle, except that no mobile home and towing vehicle having a combined length in excess of 50 feet shall be operated during the hours of 12 m. to 12 p.m. on Sundays, New Year's, Memorial, Independence, Labor, Thanksgiving and Christmas days;

3a

(e) No limitation for implements of husbandry temporarily operated upon a highway;

* * *

(2a) Tour trains consisting of 4 vehicles including the propelling motor vehicle may be operated as provided in s. 348.08 (1) (c).

348.08 Vehicle trains. (1) No person, without a permit therefor shall operate on a highway any motor vehicle drawing or having attached thereto more than one vehicle. . . .

* * *

348.15 Weight limitations on class "A" highways. (1) In this section:

* * *

(3) For enforcement purposes only and in recognition of the possibility of increased weight on a particular wheel or axle or group of axles due to practical operating problems, including but not limited to accumulation of snow, ice, mud or dirt, the use of tire chains or minor shifting of load, no summons or complaint shall be issued, served or enforced under sub. (2) unless:

* * *

(d) The gross weight imposed on the highway by all axles of a vehicle or combination of vehicles exceeds 73,000 pounds.

348.175 Seasonal operation of vehicles hauling peeled or unpeeled forest products cut crosswise. The transportation of peeled or unpeeled forest products cut crosswise in excess of gross weight limitations under s. 348.15 shall be permitted during the winter months when the highways are so frozen that no damage may result thereto by reason of such transportation. If at any time any person is so transporting such products upon a class "A" highway in such frozen condition then he may likewise use a class "B" highway without other limitation, except that chains and other traction devices are prohibited on class "A" highways but such chains and devices may be used in cases of necessity

348.19 (1) . . . (b) Any other provision of the statutes notwithstanding, a vehicle transporting peeled or unpeeled forest products cut crosswise shall not be required to proceed to a scale more than one mile from the point of apprehension if the estimated gross weight of the vehicle does not exceed the lawful limit.

* * *

348.25 General provisions relating to permits for vehicles and loads of excessive size and weight. (1) No person shall operate a vehicle on or transport an article over a highway without first obtaining a permit therefor as provided in s. 348.26 or 348.27 if such vehicle or article exceeds the maximum limitations on size, weight or projection of load imposed by this chapter.

(2) Vehicles or articles transported under permit are exempt from the restrictions and limitations imposed by this chapter on size, weight and load to the extent stated in the permit. Any person who violates a condition of a per-

mit under which he is operating is subject to the same penalties as would be applicable if he were operating without a permit.

(3) The highway commission shall prescribe forms for applications for all single trip permits the granting of which is authorized by s. 348.26 and for those annual or multiple trip permits the granting of which is authorized by s. 348.27 (2) and (4) to (7m). The commission may impose such reasonable conditions prerequisite to the granting of any permit authorized by s. 348.26 or 348.27 and adopt such reasonable rules for the operation of a permittee thereunder as it deems necessary for the safety of travel and protection of the highways. Local officials granting permits may impose such additional reasonable conditions as they deem necessary in view of local conditions.

(4) Except as provided under s. 348.27 (7m), permits shall be issued only for the transporting of a single article or vehicle which exceeds statutory size, weight or load limitations and which cannot reasonably be divided or reduced to comply with statutory size, weight or load limitations, except that:

(a) A permit may be issued for the transportation of property consisting of more than one article, some or all of which exceeds statutory size limitations, provided statutory gross weight limitations are not thereby exceeded and provided the additional articles transported do not cause the vehicle and load to exceed statutory size limitations in any way in which such limitations would not be exceeded by the single article.

(b) A single trip permit may be issued for the transportation of a load of implements of husbandry, consisting of not more than 2 articles, when the load does not exceed the length requirement in s. 348.07 by more than 5 feet.

348.26 Single trip permits. (1) APPLICATIONS. All applications for single trip permits for the movement of oversize or overweight vehicles or loads shall be made upon the form prescribed by the highway commission and shall be made to the officer or agency designated by this section as having authority to issue the particular permit desired for the use of the particular highway in question.

(2) PERMITS FOR OVERSIZE OR OVERWEIGHT VEHICLES OR LOADS. Except as provided in sub. (4), single trip permits for oversize or overweight vehicles or loads may be issued by the highway commission for use of the state trunk highways and by the officer in charge of maintenance of the highway to be used in the case of other highways. Such local officials also may issue such single trip permits for use of state trunk highways within the county or municipality which they represent. Every single trip permit shall designate the route to be used by the permittee. Whenever the officer or agency issuing such permits deems it necessary to have a traffic officer accompany the vehicle through his municipality or county, a reasonable charge for such traffic officer's services shall be paid by the permittee.

(3) TRAILER TRAIN PERMITS. The highway commission and those local officials who are authorized to issue permits pursuant to sub. (2) also are authorized to issue single trip permits for the operation of trains consisting of truck-tractors, tractors, trailers, semitrailers or wagons on highways under their jurisdiction, except that no trailer

train permit issued by a local official for use of a highway outside the corporate limits of a city or village is valid until approved by the highway commission. No permit shall be issued for any train exceeding 100 feet in total length. Every permit issued pursuant to this subsection shall designate the route to be used by the permittee.

(4) MOBILE HOME PERMITS. Single trip permits for the movement of oversize mobile homes may be issued only by the highway commission, regardless of the highways to be used. Every such permit shall designate the route to be used by the permittee and shall authorize use of the highways only between sunrise and sunset on days other than Saturdays, Sundays and holidays.

348.27 Annual of multiple trip permits. (1) APPLICATIONS. All applications for annual or multiple trip permits for the movement of oversize or overweight vehicles or loads shall be made to the officer or agency designated by this section as having authority to issue the particular permit desired for use of the particular highway in question. All applications under subs. (2) and (4) to (7m) shall be made upon forms prescribed by the highway commission.

(2) ANNUAL PERMITS. Annual permits for oversize or overweight vehicles or loads may be issued by the highway commission, regardless of the highways involved. A separate permit is required for each oversize or overweight vehicle to be operated upon a highway.

* * *

(4) INDUSTRIAL INTERPLANT PERMITS. The highway commission may issue, to industries and to their agent motor carriers owning and operating oversize vehicles in connec-

tion with interplant, and from plant to state line, operations in this state, annual permits for the operation of such vehicles over designated routes, provided that such permit shall not be issued under this section to agent motor carriers or from plant to state line for vehicles or loads of width exceeding 96 inches upon routes of the national system of interstate and defense highways. If the routes desired to be used by the applicant involve city or village streets or county or town highways, the application shall be accompanied by a written statement of route approval by the officer in charge of maintenance of the highway in question. A separate permit is required for each oversize vehicle to be operated.

(5) POLE, PIPE AND VEHICLE TRANSPORTATION PERMITS. Except as further provided in this subsection, the highway commission may issue an annual permit to pipeline companies or operators or public service corporations for transportation of poles, pipe, girders and similar materials and to companies and individuals hauling peeled or unpeeled pole-length forest products used in its business and to auto carriers operating "haulways" specially constructed to transport motor vehicles and which exceed the maximum limitations on length of vehicle and load imposed by this chapter. Such permits issued to auto carriers and to companies and individuals hauling peeled or unpeeled pole-length forest products shall limit the length of vehicle and load to a maximum of 10 feet in excess of the limitations in s. 348.07 (1) and shall be valid only on a class "A" highway as defined in s. 348.15 (1) (b). Permits issued to companies or individuals hauling pole-length forest products may not exempt such companies or individuals from the maximum limitations on vehicle load imposed by this chapter.

(6) TRAILER TRAIN PERMITS. Annual permits for the operation of trains consisting of truck tractors, tractors, trailers, semitrailers or wagons which do not exceed a total length of 100 feet may be issued by the highway commission for use of the state trunk highways and by the officer in charge of maintenance of the highway to be used in the case of other highways. No trailer train permit issued by the local officials for use of highways outside the corporate limits of a city or village is valid until approved by the highway commission. Every permit issued pursuant to this subsection shall designate the route to be used by the permittee.

(7) MOBILE HOME PERMITS. The highway commission may issue annual statewide permits to licensed mobile home transport companies and to licensed mobile home manufacturers and dealers authorizing them to transport oversize mobile homes over any of the highways of the state in the ordinary course of their business. Every such permit shall authorize use of the highways only between sunrise and sunset on days other than Saturdays, Sundays and holidays.

(7m) TRANSPORTATION OF METAL SCRAP. The highway commission may issue an annual permit for the transportation of a divisible overweight axle or tandem axle load from the point of origin to the point of unloading when the load consists of metal scrap. However, the overall load weight shall be restricted in accordance with s. 348.15 (3) (d), which limits the overall load to 73,000 pounds.

(8) EMERGENCY ENERGY CONSERVATION PERMITS. During an energy emergency, the highway commission may waive the divisible load limitation of s. 348.25 (4) and issue permits valid for a period not to exceed 30 days for overweight vehicles carrying energy resources or fuel or milk commodities designated by the governor or his designee, regardless of the highways involved, to conserve energy. Such permits may only allow weights not more than 10% greater than the gross axle and axle combination weight limitations, and not more than 15% greater than the gross vehicle weight limitations under ss. 348.15 and 348.16. No permit issued under this subsection is valid unless the overweight vehicle is registered under ch. 341 for the maximum gross weight allowed by the permit and the department of transportation has been paid a permit fee of \$10 per 1,000 pounds or fraction thereof for the amount by which such maximum gross weight exceeds 73,000 pounds. Nothing in this subsection shall be construed to permit the highway commission to waive the requirements of s. 348.07.

(9) POLE LENGTH AND PULPWOOD PERMIT. The highway commission may issue annual permits for the transportation on a vehicle combination consisting of a truck and full trailer of loads of pole length and pulpwood exceeding statutory length or weight limitations over any class of highway for a distance not to exceed 3 miles from the Michigan-Wisconsin state line, provided that if the roads desired to be used by the applicants involve streets or highways other than those within the state trunk highway system, the application shall be accompanied by a written

statement of route approval by the officer in charge of maintenance of such other highway.

TEXT OF ADMINISTRATIVE REGULATIONS

Hy 30.01 General. (1) Pursuant to authority contained in section 348.25 (3), Wis. Stats., the commission does hereby establish limits, procedures and conditions under which the various permits authorized by sections 348.26 and 348.27, Wis. Stats., may be issued.

(2) Permits for the movement over state trunk highways of vehicles and loads exceeding limits or conditions established hereby shall be issued only on specific authorization by the commission.

(3) In the interest of uniformity and brevity, the commission hereby establishes the following conditions relating to more than one type of permit, which conditions become effective by reference thereto in the section of the rules relating to the specific type of permit:

* * *

(a) 2. Requests for amendments to permits shall be submitted in writing to the authority issuing the permit.

(b) *Authorization to issue permits.* The authorization for the issuance of permits shall be as stated in the sections relating to each specific type of permit.

(c) *General limitations on issuance of permits.* 1. Except for general permits (Hy 30.06), industrial interplant permits (Hy 30.08), pole and pipe transportation permits (Hy

30.10), vehicle transportation permits (Hy 30.12) and double bottom milk truck permits (Hy 30.18), permits shall not be issued nor valid for the transporting of loads or articles which could reasonably be divided in such a manner as to allow transporting of the loads or articles in 2 or more loads which would not exceed statutory size and weight limits, nor shall permits be issued or valid for the transporting of more than one article if the vehicle and load exceed statutory weight limits.

* * *

2. Except as specifically authorized in sections Hy 30.02, Hy 30.04, Hy 30.06, Hy 30.14 and Hy 30.18, permits shall not authorize the operation of more than 2 vehicles in combination.

* * *

3. (d) *Insurance and liability conditions.* 1. In applying for and accepting a permit, the permittee agrees to pay any claim for any bodily injury or property damage for which he is legally responsible resulting from operations under the permit and to save the state and its subdivisions harmless from any claim which may arise from operations over public highways under the permit.

* * *

(e) *General conditions.* 1. The maximum size limitations and the maximum axle, axle combination and vehicle weights authorized by a permit shall not be exceeded. A divisible load, consisting of articles none of which exceeds statutory size limits, may not be transported under a permit.

2. Permits issued by the commission authorize the use of any of the highways of the state, subject to the limitations stated in the permit.

* * *

Hy 30.02 Single trip permits.

* * *

(2) *Authorization to Issue Single Trip Permits.* The officer or agency authorized by section 348.26, Wis. Stats., may issue single trip permits for operation over specific classes of highways as provided in said section. Single trip permits for transportation over state trunk highways may be issued as follows:

* * *

(3)(b) Single trip permits may be issued for the transportation of a vehicle combination, consisting of 3 empty vehicles in transit from manufacturer or dealer to purchaser or dealer, or for the purpose of repair. The towing vehicle shall be a truck-tractor or a road tractor.

* * *

Hy 30.04 Annual permits.

* * *

(2) *AUTHORIZATION TO ISSUE ANNUAL PERMITS.* The chief traffic engineer or his authorized representatives may issue annual permits subject to such size, weight and other limitations as the commission may, from time to time, prescribe.

(3) *GENERAL LIMITATIONS ON ISSUANCE OF ANNUAL PERMITS.* The issuance of annual permits shall be subject

to the general limitations stated in Wis. Adm. Code sections Hy 30.01 (3) (c) 1, 2 and 3, and the following:

(a) Annual permits shall not be issued for house trailers, mobile homes, travel trailers or camper trailers.

(b) Annual permits may be issued for self-propelled carry-all scraper, provided that no single axle may exceed 35,000 pounds.

* * *

Hy 30.06 General permits.

* * *

(2) AUTHORIZATION TO ISSUE GENERAL PERMITS. (a) The officer of agency authorized by section 348.27, Wis. Stats., may issue general permits for operation on highways for the maintenance of which the officer or agency is responsible.

* * *

(3)(b) General permits may be issued for loads which exceed statutory size or weight limitations or both.

* * *

(d) General permits may be issued for the operation of a vehicle combination consisting of three empty vehicles in transit from manufacturer or dealer to purchaser or dealer or for the purpose of repair. The towing vehicle shall be a truck-tractor or a road tractor.

* * *

Hy 30.08 Industrial interplant permits.

* * *

(3) GENERAL LIMITATIONS ON ISSUANCE OF INDUSTRIAL INTERPLANT PERMITS. The issuance of industrial interplant permits shall be subject to the general limitations stated in Wis. Adm. Code sections Hy 30.01 (3) (c) 2, 3 and 4, and the following:

* * *

(5)(a) The size limitations on vehicles which may be operated on a public highway under an industrial interplant permit will be determined in each particular instance by the commission.

* * *

Hy 30.10 Pole and pipe transportation permits.

* * *

(2) AUTHORIZATION TO ISSUE POLE AND PIPE TRANSPORTATION PERMITS. The chief traffic engineer or his authorized representatives may issue pole and pipe transportation permits subject to such size and other limitations as the commission may, from time to time, prescribe.

* * *

Hy 30.12 Vehicle transportation permits.

* * *

(2) AUTHORIZATION TO ISSUE VEHICLE TRANSPORTATION PERMITS. The chief traffic engineer or his authorized representatives may issue vehicle transportation permits subject to such size and other limitations as the commission may, from time to time, prescribe.

(3) GENERAL LIMITATIONS ON ISSUANCE OF VEHICLE TRANSPORTATION PERMITS. The issuance of vehicle transportation permits shall be subject to the general limitations stated in Wis. Adm. Code sections Hy 30.01 (3) (c) 2, 3 and 4, and the following:

(a) Vehicle transportation permits will be issued only to auto carriers operating "haulaways" specially constructed to transport motor vehicles and for vehicles which exceed the maximum limitations on length of vehicle and load imposed by chapter 348, Wis. Stats.

* * *

Hy 30.14 Trailer-train permits.

* * *

(2) AUTHORIZATION TO ISSUE TRAILER TRAIN PERMITS.

(a) The officer or agency authorized by section 348.27 (6), Wis. Stats., may issue trailer-train permits for operation on highways for the maintenance of which the officer or agency is responsible.

(b) The chief traffic engineer or his authorized representatives may issue trailer-train permits for movement on the state trunk highway system, subject to such size and other limitations as the commission may, from time to time, prescribe.

(c) Trailer-train permits issued by local authorities for transportation over highways outside of the corporate limits of cities and villages shall not be valid until approved by the commission or its authorized representatives. The chief traffic engineer and his authorized representatives may approve trailer-train permits issued by local authorities.

(3) GENERAL LIMITATIONS ON THE ISSUANCE OF TRAILER-TRAIN PERMITS. The issuance of trailer-train permits shall be subject to the general limitations stated in Wis. Adm. Code sections Hy 30.01 (3) (c) 2 and 4, and the following:

(a) Trailer-train permits shall be issued only for the operation of vehicles used for the transporting of municipal refuse or waste, or for the interstate or intrastate operation without load of vehicles in transit from manufacturer or dealer to purchaser or dealer, or for the purpose of repair.

(b) Trailer-train permits shall not be issued for wagons used in connection with seasonal agricultural industries.

(4) INSURANCE AND LIABILITY CONDITIONS. Trailer-train permits are issued subject to the insurance and liability conditions set forth in Wis. Adm. Code sections Hy 30.01 (3) (d) 1, 2, 3, 4, 5 and 6, and the following:

(a) The permittee will be required to certify and may be required to present satisfactory written evidence that at least the following insurance coverage or in lieu thereof a bond in a form satisfactory to the authority issuing the permit, is or will be in full force and effect on the vehicles and load designated in the permit while operating on the public highway:

Bodily injury liability — each person.	\$100,000
Bodily injury liability — each accident.	300,000
Property damage liability — each accident.	100,000

(5) GENERAL CONDITIONS. Trailer-train permits are issued subject to the general conditions set forth in Wis. Adm. Code section Hy 30.01 (3) (e) 1, 3, 4, 5, 8, 9, 10, 11, 12, 17, 20, 22, 23, 24, 25, 26, 27, and 30, and the following:

(a) A trailer-train permit issued by the division of highways for a movement which is partly on the state highway system and partly on other classes of highways, is valid only on state highways.

(b) The total length of trains consisting of truck-tractors, tractors, trailers, semitrailers, or wagons operating under the terms of a trailer-train permit and the number of vehicles in such a trailer-train determined by the authority issuing the permit shall not be exceeded, and in no event shall the overall length of the train of vehicles exceed 100 feet. The height and width of the such vehicles shall not exceed statutory limits.

(c) Trailer-trains operating under a permit shall carry in addition to any lights prescribed by Wisconsin Statutes and by the valid ordinances of the municipalities in which they are operated, a red light or approved reflective signal on each side of each trailer so placed as to make the trailer visible from all sides.

(d) A trailer-train permit is valid only for the vehicle(s) described upon the application and permit.

Hy 30.18 Double bottom milk truck permits. (1) APPLICATION REQUIREMENTS. The application requirements for double bottom milk truck permits shall be as set forth in Wis. Adm. Code section Hy 30.01 (3) (a), and the following:

* * *

(3) (a) Double bottom milk truck permits shall be issued only for the operation of a combination of three vehicles used for the transporting of milk from the point of production to the point of first processing, when the issuance of permits is deemed consistent with highway safety considering prevailing traffic conditions.

(b) Double bottom milk truck permits shall be issued only to vehicle combinations which do not exceed statutory size and weight limitations.

* * *

JUL 11 1977

MICHAEL RODAK, JR., CLERK

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. 76-558

**RAYMOND MOTOR TRANSPORTATION, INC.,
A Minnesota Corporation,**

and

**CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE, a Delaware Corporation,
*Appellants,***

v.

**ZEL S. RICE, ROBERT T. HUBER,
JOSEPH SWEDA, REBECCA YOUNG,
WAYNE VOLK, LEWIS V. VERSNICK, and
BRONSON C. LA FOLLETTE,
*Appellees.***

**On Appeal From The United States District Court
For The Western District Of Wisconsin**

BRIEF FOR THE APPELLEES

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**On Appeal From The United States District Court
For The Western District Of Wisconsin**

BRIEF FOR THE APPELLEES

SUMMARY OF ARGUMENT

Wisconsin law does not discriminate against interstate commerce. Vehicles over 55 feet in length are prohibited. There are certain exceptions which benefit agriculture and industry, all of which promote valid police power purposes.

Prohibition of overlength vehicles does not produce an undue burden on interstate commerce. The court has sometimes applied a balancing test to cases not involving highway safety. In such cases, the court has distinguished the highway safety cases.

The prohibition of twin trailers does not prevent interlining or exchange of trailers between trucking companies. It was only because the Illinois mud guard requirement prevented interlining that the court in *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959), found an undue burden on interstate commerce.

Wisconsin's chief concern is over the safety hazards posed by an extra 10 feet of truck length. Length bears an obvious relation to safety. Since longer vehicles or even triple trailers might be shown to be safe, the decision as to what lengths to permit involves judgment and discretion. The court should leave this decision to the legislature and should not substitute its judgment for that of the legislature.

ARGUMENT

I. Wisconsin's Regulatory Scheme Does Not Discriminate Against Interstate Commerce.

The Wisconsin statutes and administrative regulations, relative to size of vehicles upon Wisconsin highways, are printed in an appendix at the end of Appellants' brief. Wisconsin restricts the overall length of a two vehicle combination to 55 feet. Section 348.07(1), Wis. Stats. This applies to the truck tractor-trailer combination commonly referred to as a "semi." Combinations of more than two vehicles are prohibited without a permit. Section 348.08(1), Wis. Stats. The State Highway Commission is authorized to issue trailer train permits for combinations of more than two vehicles up to 100 feet in length. Section 348.27(6), Wis. Stats. Because of the obvious dangers of such lengthy combinations, the Highway Commission has chosen to limit the issuance of such permits to the transporting of municipal refuse or waste, or for the interstate or intrastate operation without load of vehicles in transit from manufacturer or dealer to purchaser or dealer, or for the purpose of repair. Wis. Adm. Code section HY 30.14(3)(a). The Appellants were denied permits for their 65 foot twin trailer combinations under the above statutes and regulations. Wisconsin's chief concern is the safety hazard of such overlength vehicles.

The Highway Commission may also issue permits to industries and their agents to operate oversize vehicles "in connection with interplant, and from plant to state line, operations in this state." Section 348.27(4), Wis. Stats. The purpose of this statute is to allow a manufacturer with two plants in Wisconsin to ship between his two plants in oversize vehicles. This in

effect makes the highway between the two plants a part of the assembly line process. Examples of this are the shipment of car bodies by American Motors from its body plant to its assembly plant, and the shipment by the Schlitz Brewing Company of empty beer cans from its can producing plant to its brewing and canning plant. It is probable that these interplant permits were authorized to benefit American Motors, the smallest of the automobile manufacturers, to assist this company in its competition with its giant competitors. Appellants argue this is blatantly discriminatory to the interstate commerce of an out-of-state manufacturer. As to the permits for plant to state line shipments, this law actually favors interstate commerce because such movements are, in fact, interstate in nature. As to plant to plant permits, the Highway Commission could not issue such permits to an out-of-state manufacturer with out-of-state plants, because movements between such plants would be beyond the jurisdiction of this state. However, Appellants perceive a discrimination against an out-of-state manufacturer who wants to ship his goods into or through Wisconsin. Regardless of whether the court would think this a significant discrimination against interstate commerce, it is clear that Appellants have no standing to raise this question because it does not directly affect their rights. The only person who could raise such question would be a person with a plant in another state who applied for an interplant permit to haul from his out-of-state plant to his plant in Wisconsin. Appellants do not fall into this category. It is clear they are trying to raise a constitutional question on a point which affects the rights of others. The law is clear that a party must try his own case and may not urge the unconstitutionality of a statute on a point not affecting his rights. A party may not challenge the constitutionality of a statute on the ground that it may be applied unconstitutionally to others. *Broaderick v. Oklahoma*, 413

U.S. 601 (1973); *Dombrowski v. Pfister*, 380 U.S. 479 (1965).

Permits may also be issued to auto carriers operating haulways specially constructed to transport motor vehicles. Such auto carrying vehicles may be up to 65 feet long. Section 348.27(5), Wis. Stats. Appellants argue this is a subtle discrimination to benefit Wisconsin automobile manufacturers. These permits are not limited to intrastate commerce. They are not limited to Wisconsin auto carriers or Wisconsin automobile manufacturers. These permits are available to any automobile carrier, hauling automobiles for any manufacturer including out-of-state manufacturers. Such permits benefit the whole industry nation-wide from the manufacturer to the carrier to the dealer to the consumer. This extra length for auto carriers was probably authorized for the benefit of that part of the trucking industry which transports automobiles, to help them remain in business against the growing competition of the railroads which threaten to take such business away from the truckers. At page 276 of the Appellants' appendix, there is a picture of one of these auto carrying vehicles. It consists of a truck which carries three automobiles on its own superstructure, and a trailer which carries four automobiles. Here, the front vehicle is actually a truck upon which a part of the cargo is directly loaded. To shorten this vehicle combination 10 feet would reduce its carrying capacity by two automobiles. The very nature of the cargo and the configuration of the vehicle are probably the reasons why the 65 foot length was allowed.

Appellants also point out that the 55 foot twin trailers are authorized by Wisconsin law for hauling milk. Wis. Adm. Code section HY 30.18(3). This regulation authorizes use of a twin trailer combination no more than

55 feet long for hauling milk from the point of production to the point of first processing. This benefits the farmer. These trips may be intrastate or interstate. There is no discrimination against interstate commerce. Appellants also point out that the paper industry benefits from exemptions for the hauling of pulpwood. Pulpwood is grown on farms. This exemption is for the benefit of farmers.

This regulatory scheme does not discriminate against interstate commerce either explicitly or implicitly. None of these statutes or regulations is directed at interstate commerce. These statutes and regulations are applicable without regard to the interstate or intrastate nature of the commerce involved. Nothing in these statutes or regulations indicates a purpose to isolate local industry or agriculture from foreign competition. See *Best v. Maxwell*, 311 U.S. 454 (1940); *Minnesota v. Barber*, 136 U.S. 313 (1890); *Dean Milk Co. v. Madison*, 340 U.S. 349 (1951); *Washington State Apple Advertising Com. v. Holshouser*, 408 F. Supp. 857 (E.D. N.C. 1976). Appellants appear to be taking the position that, if the State makes exceptions for certain industries, the State must make similar exceptions for others. Their argument seems to be if you do it for others, you must do it for us. This is not the law. Exceptions are a standard statutory device. Reasonable classifications may be made and this does not constitute a denial of equal protection. Such exceptions need only be designed to promote a proper police power purpose.

Both the police power and the taxing power may be exercised in such a way as to benefit farmers and industry. Many cases have sustained the validity of favored treatment of farmers against a charge of denial of equal protection. In *Northern Wis. Co-operative Tobacco Pool v. Bekkedal*, 182 Wis. 571, 197 N.W. 936

(1924), the court upheld the co-operative marketing law as a proper exemption given to farmers, which did not constitute a denial of equal protection. In *Wis. Truck Owners Ass'n. v. P.S.C.*, 207 Wis. 664, 242 N.W. 668 (1932), the court upheld a ton-mile tax exemption of motor vehicles used or operated exclusively in transporting dairy or other farm products, as against a charge of denial of equal protection. In *State v. Wetzel*, 208 Wis. 603, 243 N.W. 768 (1932), the court upheld the exemption of implements of husbandry from length restrictions applicable to other vehicles on the highway, as against an equal protection challenge. In *Oregon v. Pyle*, 226 Or. 485, 360 P. 2d 626 (1961), the court upheld a statute allowing heavier axle weights for trucks hauling logs, poles or piling than for trucks hauling other products. The court held the special treatment afforded the haulers of these timber products was justified on the ground the legislature desired to foster the logging industry, and that it is within the power of the legislature to grant special benefits to one branch of industry in order to promote the public good. In *Sproles v. Binford*, 286 U.S. 374 (1932), a Texas law regulated the size and weight of motor vehicles. It was challenged as a denial of equal protection because it exempted from size limitations implements of husbandry, well drilling machinery, and road building machinery. The court upheld the law. The law also favored railroads by allowing longer vehicles to be used for hauling to and from a railroad receiving, loading, or unloading point. The court held this permissible because the state has a vital interest in the appropriate utilization of the railroads which serve its people.

It is clear from these cases that the police power may be exercised in such a way as to benefit agriculture, lumbering, and other local industry, and that regulation of the use of the highways may favor such industries.

II. Prohibition Of Overlength Vehicles Is Not An Undue Burden On Interstate Commerce.

A. A balancing test is sometimes used.

Appellants argue that the proper legal standard to be applied is a balancing of the State's interest in highway safety as against the burden on interstate commerce. Where highway safety was involved, the court has not followed such balancing test. In cases where the balancing test was applied, the court has distinguished the safety cases. An analysis of the pertinent cases will be helpful.

In *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U.S. 177 (1938), the court held that a state may impose uniform size and weight limitations to promote safety upon its highways. Congress could determine whether the burdens of state regulation are too great, but this is a legislative, not judicial function. Courts do not sit as legislatures and cannot act as Congress does when, after weighing conflicting interests, it determines when and how much the state regulatory power shall yield to the large interests of national commerce. A court is not called upon, as are state legislatures, to determine what, in its judgment, is the most suitable restriction to be applied, or to choose that one which, in its opinion, is best adapted to all the diverse interests. This is not a judicial choice and constitutionality is not to be determined by weighing in judicial scales the merits of the legislative choice and rejecting it if the weight of evidence presented in court appears to favor a different standard. Here, the court clearly refused to apply a balancing test. The rule here set forth has not been changed by subsequent decisions, at least as far as highway safety regulations are con-

cerned. This was followed in *Maurer v. Hamilton*, 309 U.S. 598 (1940). In *Railway Express Agency, Inc. v. New York*, 336 U.S. 106 (1949), the court followed both *Barnwell* and *Maurer* and held that where traffic control and use of highways is involved and there is no conflicting federal regulation, great leeway is allowed local authorities, even though the local regulation materially interferes with interstate commerce.

In *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945), the court did apply a balancing test. There, the question was whether a state law limiting the length of trains constituted an undue burden on interstate commerce. The court found that the benefit of short trains in reducing accidents due to slack action was more than offset by the increased number of accidents caused by the running of more trains. The court also found a great burden on interstate commerce due to the necessity of breaking up long trains for operation through the state and then reassembling them into long trains again on leaving the state. The court concluded that such regulation passes beyond what is plainly essential for safety since it does not appear that it will lessen rather than increase the danger of an accident. The court held that examination of all relevant factors makes it plain that the state interest is outweighed by the interest of the nation in an adequate, economical and efficient railway transportation service, which must prevail. Here, the court clearly applied a balancing test, something they had refused to do in *Barnwell*. However, they distinguished that case pointing out that that case concerned the power of the state to regulate the use of its highways, a legislative field over which the state has far more extensive control than over interstate railroads.

In *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959), an Illinois statute required trucks to have a curved mud guard rather than the conventional mud flap. The court said the law must be upheld unless the total effect of the law as a safety measure is so slight as not to outweigh the national interest in interstate commerce. There was substantial cost involved in installing the new mud guards and the evidence was in conflict as to their safety benefits. The court concluded that they would have to sustain the law if only these cost and disputed safety factors were involved. However, the court pointed out that the mud guard requirement interfered with interlining which is the interchanging of trailers between an originating carrier and another carrier. Because of this interference with interlining, the court held the mud guard requirements an unconstitutional burden on interstate commerce.

Brotherhood of Loc. F. and E. v. Chicago, R. I. and P. R. Co., 393 U.S. 129 (1968), involved the constitutionality of the Arkansas full train crew law. The evidence was conflicting as to the effect of the full crew requirement on safety. The court concluded that such questions of safety were for the legislature. The court will not resolve conflicts in the evidence against the conclusion of the legislature. The court refused to balance the increased costs to the railroad against the safety of railroad employees and people using the highways. The court concluded these disputes should be worked out by the legislature.

In *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), an Arizona law required cantaloupes grown in Arizona to be packed in that state. Such packing had to be done in packing sheds. The grower had such packing facilities in California, but none in Arizona. To build such facilities in Arizona would have cost \$200,000. The state interest

involved lay in having these high quality products labeled as Arizona cantaloupes, rather than California cantaloupes. The court held that it was an undue burden on interstate commerce to require the grower to go into the local packing business for the sake of enhancing the reputation of other producers within the state. Here, the court applied a balancing test and found the burden on interstate commerce outweighed the benefits of the law to Arizona. However, the court pointed out they were not dealing with legislation in the field of safety where the propriety of local regulation has long been recognized.

B. Prohibition of twin trailers does not prevent interlining.

Interlining is the practice of exchanging trailers between trucking companies. In *Bibb v. Navajo Freight Lines, Inc.*, *supra*, the court struck down the Illinois mud guard law because it prevented interlining. However, the Wisconsin law on 65 foot twin trailers does not prevent interlining. A vehicle without the special mud guards could not be operated in Illinois. Appellants' trailers may freely be hauled through Wisconsin, but, of course, they must be hauled one at a time. The only prohibition is that they cannot be doubled up. This does not prevent interlining, it just makes it more expensive. In *Bibb*, the court said that if only the extra expense and the disputed safety factors were involved, it would sustain the law. It was only the interference with interlining which made the law unconstitutional. Since Wisconsin's ban on 65 foot twin trailers does not prevent interlining, this case stands as an authority for sustaining the Wisconsin law.

Illinois was the only state which required the curved mud guards. They were legal, but not required in other

states, except Arkansas which prohibited their use. Thus, the curved mud guard was legal in all states but one. The situation with 65 foot twin trailers is not the same. Many states allow them, but many states prohibit them. At page 278 of the Appendix in this case, is a map which is part of the evidence in this case. Shown in blue are the states which permit 65 foot twin trailers. In Iowa, they are limited to 60 feet. In New York, Massachusetts, and Florida, 65 foot twin trailers are permitted only on turnpikes which include the interstate highways. Shown in green, Mississippi, Georgia, and New Jersey allow twin trailers of less than 60 feet. Shown in yellow, are the states which prohibit twin trailers entirely.

Wisconsin law does prevent running 65 foot twin trailers from Chicago through Wisconsin to Seattle. This cannot be done through Iowa either. Similarly, 65 foot twin trailers cannot be run all the way from Chicago to Florida. Although they can be run on Florida turnpikes, they cannot get there from Chicago, because Tennessee, Mississippi, Alabama, and Georgia do not allow it. Similarly, 65 foot twin trailers cannot be run from Ohio to New York and Massachusetts where they are legal, because Pennsylvania will not allow it. Also, they cannot be run from Ohio to Maryland and Delaware where they are legal, because they cannot get through Pennsylvania and West Virginia. Seventeen states prohibit 65 foot twin trailers and three more states limit their use to certain highways. This is nothing like the situation in *Bibb* where only one state required curved mud guards. In that case, only one state was out of step with the others. In the present case, some twenty states are out of step with what are predominately western states. In this case, the court is not ruling on the constitutionality of the law of one state, but in effect, may be ruling on the law of some nineteen other states.

C. Wisconsin is chiefly concerned with the extra length of twin trailers.

Appellants have been denied permits for their twin trailers primarily because they exceed statutory specification of 55 feet as a maximum length of vehicles. Vehicle size bears a direct relation to safety. Early cases recognized that vehicle size affects safety and that excluding larger vehicles promotes safety. *Buck v. Kuykendall*, 267 U.S. 307 (1925); *Morris v. Duby*, 274 U.S. 135 (1927). In *Sproles v. Binford*, 286 U.S. 374 (1932), the court held that a state may act to prevent the hazards due to excessive size of vehicles, that limitations of size are subjects within the broad range of legislative discretion, and that the state may in this way discourage the use of vehicle trains or combinations. Thus, to exclude Appellants' vehicles both because of excessive length and trailer train configuration is permissible in the interest of safety. Appellants have shown that 65 foot twin trailers have as good a safety record as other large vehicles. Officials of a number of states and the federal government are convinced that such vehicles are safe enough to be allowed on the highway. However, the concern of people in Wisconsin and their legislators centers around the commingling of vehicles upon the highway with trucks which are 10 feet longer than at present, and the ability of other drivers to pass, such vehicles. See page 29 of the deposition of Robert T. Huber, Chairman of the State Highway Commission in the appendix printed at the end of this brief. The passing of a long truck poses obvious hazards. In bad weather, the car driver may be almost blinded with an obstructed windshield. No matter what the relative speed of the two vehicles, in the case of twin trailers, there would be an extra 10 feet of this condition. Wisconsin drivers would prefer to avoid this. All drivers have experienced this at some time. Their fear of this is not irrational. The

safety factors are obvious. Wisconsin can properly limit the length of vehicles on its highways to minimize this hazard.

D. The court should leave this problem to the legislature.

In *Barnwell*, the court held that states may regulate highway safety and that Congress may determine whether the burden on interstate commerce is too great. However, that is a legislative and not judicial function. The courts will not weigh the relative merits in the judicial scales, and will uphold the legislation if it has a rational basis. In the case presently before the court there is a sharp conflict in the evidence. While twin trailers have a good record in other states, there are obvious safety hazards in passing the extra length in bad weather. The people of this state have shown great concern over these hazards. There is room for a difference of opinion and the opposition of the people is not irrational. In the *Southern Pacific* case, the court admittedly weighed the state interest in train safety against the national interest in interstate commerce and struck down the train length law as an undue burden on interstate commerce. In so doing, the court carefully distinguished the situation in *Barnwell* and pointed out that a state has far more control over highways than railroads.

In *Bibb* the court said it would uphold the law unless it can see that the benefits of the safety measure are so slight as not to outweigh the national interest. The court pointed out that because of the impact upon interlining, this is one of the few cases where the burden on commerce outweighs the safety measure. We have pointed out that this is not applicable to the case presently before the court, because here interlining is

possible although not as profitable and the court in *Bibb* made it clear that high cost alone is not enough to overturn a law. In the *Full Crew Law* case, the court retreated from its balancing test and held that the evidence in that case left little doubt that the question of safety is essentially a matter of public policy which under our constitutional system can only be resolved by the people acting through their elected representatives. The court's responsibility does not authorize it to resolve the conflicts in the evidence against the conclusion of the legislature. The court left the problem to be worked out in the legislature.

The people of the State of Wisconsin and their legislators have expressed great concern over the extra length of these 65 foot vehicles, and the obvious hazards involved in passing. See the portion of the testimony of Robert T. Huber, Chairman, State Highway Commission, printed in the Appendix at the end of this brief. In view of this concern, we think the court should leave the present long truck controversy to be worked out by the legislature and the people of this state. This seems especially appropriate where a total length of 70 or 75 feet would probably also be safe. Also, triple trailers, perhaps 85 feet long, may come into use. If these were shown to be safe, would the court approve of them also. Should the court make the final decision as to what is safe? The problem is where to stop. We submit that the choice of how far to go is a matter of legislative discretion, and the court should not substitute its judgment for that of the legislature.

CONCLUSION

Wisconsin's prohibition of 65 foot twin trailers does not discriminate against interstate commerce. Exceptions are based upon valid police power purposes. There is no undue burden on interstate commerce. Interlining is not impossible as in *Bibb*. The court should not apply a balancing test, but should leave this problem to be worked out by the legislature.

Respectfully submitted,

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APPELLEES' APPENDIX

**DEPOSITION OF ROBERT T. HUBER,
CHAIRMAN, STATE HIGHWAY
COMMISSION.**

* * *

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EXAMINATION

BY MR. HARRIMAN:

Q Mr. Huber, from your years of experience with the Legislature and from your years of experience on the Highway Commission, will you tell us what your assessment is of the attitude of the people of the State of Wisconsin regarding twin trailers?

A I suppose you could describe the attitude or the basis for the attitude as one between the constituents and the legislative representatives. That is to say, the Legislature has on several occasions, '65 and '71 and I'm not sure about '73, considered legislation to legalize the general use of 65-foot trucks on divided highways.

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The constituent mail was substantially in opposition. The general public, if you can judge by the mail that the legislators get and by the discussions I had with my colleagues at that time and since on the Commission, is a strong evidence of opposition to going to that kind of legislation and I suppose the attitude of the Wisconsin public is gleaned from the attitude of the constituents who form the opinion of the legislators and cause them to vote the way they do.

Q. Do you want to expand on that any further?

A Well, I think it's pretty clear that the legislators, especially those that want to continue in office, pay attention to their constituents. There is no doubt in the minds of any one of the legislators in their district that the overwhelming amount of mail and the general response, telephone and otherwise, is in opposition to the proposal.

Q And as a result of this proposal to the Legislature to authorize the general use of twin trailers, these proposals have not passed?

A The proposals have not passed and that forms the basis for the posture of the Highway Commission as a result.

Q Well, then, the second question; would you spell out why the Highway Commission denied the twin trailer permits that are involved here, the permits to these two plaintiffs involved in this case?

A There is something that is very clear in the minds of the Legislature and that is that the State agencies are to do the will and bidding of the lawmaking body, the Legislature. The clear legislative intent having been established on several occasions on bills to legalize twin trailers causes the Commission to continue to hold its posture in not granting permits even though they may have that clout or authority to do so in some respective areas. I think the legislative intent is clearly

established and has been in the case — in this issue as a legislative directive to the Highway Commission.

Q Do you conclude that the Legislature does not intend or desire at this time that the Highway Commission should authorize the general use of twin trailers on Wisconsin highways?

A Well, another example of that, and you are asking if that is my conclusion, which is correct, and most recently — I think it was in the '73 session, some of the dairy people came in and they had a milk plant to which the milk is to be delivered and this involves Minnesota and the northwest part of Wisconsin where they wanted to delivery quantities of milk in twin trailer fashion.

The milk people came to us and we told them their recourse, the solution was down at the Capitol. We then attended a meeting of the Agricultural Committee with the milk people and again it was brought home very clearly to us, the Commission, as a result of that discussion that the legislative members in attendance at that meeting by no means wanted the Commission to take any such steps and that their position was still the same, in opposition to granting the use of twin trailers in that fashion.

Q You have used the word constituents, and we understand that to mean the people who write to and vote for the legislators; the public, in other words.

Do you know from your own experience with this — you pointed out these people object to the introduction of twin trailers. Do you know from your own experience more specifically what they are afraid of, if they are afraid of something?

- A As I reflect upon the kinds of letters, and that is slightly vague now in my mind, in the days when I was still in the Legislature yet their concern seemed to center around a commingling of vehicles, in this case 10 feet longer in the case of the trucks, and the ability to be able to pass such a vehicle caused a great deal of concern among the people at that time.

Apparently it is still one of the bases for the opposition of the legislators because in talking to them individually since these are still the kinds of letters they are receiving.

* * *

In the
SUPREME COURT of the UNITED STATES

October Term, 1976

No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC.,

a Minnesota Corporation

and

CONSOLIDATED FREIGHTWAYS CORPORATION

OF DELAWARE,

a Delaware Corporation,

Appellants,

vs.

ZEL S. RICE, ROBERT T. HUBER, JOSEPH

SWEDA, REBECCA YOUNG, WAYNE VOLK,

LEWIS V. VERSNIK, and BRONSON C.

LA FOLLETTE,

Appellees.

*On Appeal From The United States District Court
For The Western District of Wisconsin*

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Appellees.

*On Appeal From The United States District Court
For The Western District of Wisconsin*

REPLY BRIEF FOR THE APPELLANTS

I. THE LEGAL ISSUES

The broad questions presented by this case are two:

"Does Wisconsin's refusal to permit twin trailers on the Interstate Highways in Wisconsin violate the Commerce Clause by placing a burden on interstate commerce which outweighs any legitimate local interest?"

"Does the Wisconsin regulatory scheme for vehicles unconstitutionally discriminate against interstate commerce?"

The resolution of the first question depends on two issues. The first is whether the standard of *Pike v. Bruce Church*, 397 U.S. 137 (1970) is applicable to a state regulation asserted to promote highway safety. The second issue is whether Wisconsin's ban promotes safety. Though the magnitude of the burden on interstate commerce is normally an issue under *Pike*, it is not seriously denied in this case.

The District Court found that Wisconsin's ban did promote safety. The conclusion was reached by applying an erroneous presumption irrebuttably linking vehicle size with safety and by making unsupported findings of fact contradicted by the record. (Appellant's Brief, pp. 39-43).

The discrimination question depends on two issues: whether Wisconsin's interplant permits are discriminatory and whether Wisconsin's entire regulatory scheme is discriminatory in its effects on interstate commerce. (Appellant's Brief, pp. 21-24, 47-49). Appellees have raised two subsidiary issues: whether the discriminations are justified, and whether appellants have standing to assert the discriminations.

The District Court found no discrimination in regard to the interplant permits on the basis of a general policy statement, which was specifically contradicted in the record. (Appellant's Brief, pp. 20-21). In regard to the effects of the regulatory scheme, the District Court found no discrimination. The Court further held that any discrimination would be justified by the safety differences previously found from the presumption that safety and size are linked. (Appellant's Brief, pp. 21-25, 43; 47-49).

A. PIKE v. BRUCE CHURCH IS THE APPROPRIATE STANDARD TO APPLY TO THIS CASE.

The primary issue in determining the constitutionality of the Wisconsin highway regulations is the legal standard to be applied. Appellants assert *Pike v. Bruce Church*, 397 U.S. 137 (1970) to be the appropriate standard.

"Although the criteria for determining the validity of state statutes affecting interstate commerce have been variously stated, the general rule that emerges can be phrased as follows: Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. *Huron Cement Co. v. Detroit*, 362 U.S. 440, 443. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

Appellees and Amici argue that *South Carolina Highway Department v. Barnwell Bros., Inc.*, 303 U.S. 177 (1938), is the proper standard, or in the alternative, that *Pike* should be modified by *Barnwell* and similar cases.

The suggested "modifications" are two. First, Appellees suggest that this Court should apply an irrebuttable presumption that regulation of the size of vehicles is, without exception, a regulation which promotes safety. Second, Appellees assert state legislative decisions in the area of highway safety to be immune from judicial review.

This Court enunciated *Pike* as a general statement of the criteria for applying the Commerce Clause to state regulations of commerce. *Pike* was an eloquent summarization of a long historical attempt to reconcile the powers of the national government and the state governments. It has been adhered to by this court repeatedly since its enunciation.¹ The Constitution itself does not distinguish between highway safety and other justifications for state legislation of commerce. Thus, if there is a reason for not applying *Pike* to regulation of motor transportation, the reason must be found in peculiarities of the field regulated which remove that field from the general sweep of the Constitution.

Barnwell posits such a peculiarity. Highways, it suggests, can never be a subject of national concern or regulation because "The conditions under which highways must be built in the several states, their construction and the demands made upon them, are not uniform." 303 U.S. 177 at 195.

Amicus Virginia artfully and cogently argues that the policy considerations underlying *Barnwell* are sound today. In undertaking to apply *Barnwell* to this case, however, Appellees and Amici face a difficult task. *Barnwell* holds that the policy reasons for local regulation of highways are so compelling that it is unnecessary to consider the burden placed on interstate commerce — the nation's interest in freedom of interstate commerce will always be outweighed by the state's need and interest in varying local regulation. *Barnwell* effectively forecloses any balancing of the policy considerations.

¹ *Hunt v. Washington Apple Advertising Commission*, 53 L. Ed. 2d 383 (1977); *Great Atlantic and Pacific Tea Co. v. Cottrell*, 424 U.S. 366 (1976); *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794 (1976); *Alленberg Cotton Co., Inc. v. Pittman*, 419 U.S. 20 (1974).

The facts of this case, however, show the *Barnwell* assumption to be false. This case presents a situation where the policy considerations supporting local regulation are the weakest possible. Their weakness is sharply illustrated by the fact that no objection is raised to twin trailers based upon considerations peculiar to Wisconsin. If the principal policy consideration for local regulation is that of varying local conditions, that policy consideration would seem absent when the regulation cannot be supported by any local condition or characteristic.

The reason for this absence is apparent from the record. The highways which appellants seek permits to use are not local highways; they are Interstate Highways that form the principal channels of interstate motor transportation. Upon entering Wisconsin the Interstate Highways do not suddenly narrow or widen, their construction does not change, and their direction does not alter. Indeed, absent a sign proclaiming "Welcome" from the Governor, the user would not know that he had exited one state and entered another.

The policy considerations underlying local regulation are at their weakest in this case, but the policy considerations for freedom from the burden imposed by local regulation are at their strongest. Appellants are a part of a complex and sophisticated interstate transportation system for general commodities. They transport the goods of commerce between and through numerous states and routinely and regularly interchange equipment with other carriers in the system to provide nationwide service. Wisconsin's ban imposes cost burdens on the citizens of other states served by the system, disrupts the quality and availability of service in numerous states, and fragments and dislocates the transportation system. The nation's

interest in a free and unhindered national economy is most vulnerable in its indispensable need for rapid and efficient interstate transportation of goods. By damaging the ability of Appellants and others to smoothly and efficiently move the goods of commerce, Wisconsin's ban directly strikes at the national interest.

This case is exceptional because the particular facts create a case of extremes in terms of policy considerations. Because of the particular facts, it may be that this case, like that in *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959) is "one of those cases — few in number — where local safety measures . . . place an unconstitutional burden on interstate commerce." Those facts, however, are developed from general changes in the national economy, in methods of transportation, and in highway conditions. Those changes suggest that *Barnwell* itself is premised on assumptions that are now false.

Appellees and particularly Amicus Virginia suggest that abandonment of *Barnwell* will result in a loss of all state regulation of highways and the interposition of federal control. It will not result in exclusive federal control just as *Pike* has not resulted in exclusive federal control of the packing of cantaloupes. If state regulations are based on reason, as most are, and are not designed to promote one state's economy at the expense of another's, there will be no constitutional difficulty. If, as Amicus Virginia argues, local conditions require local regulation, *Pike* will permit such local regulation. *Pike* does not mandate the invalidity of local regulation, *Pike* merely requires that the needs of local regulation be measured against the needs of the nation.

The only plausible argument against the overruling of *Barnwell* is the possibility of increased litigation. The evidentiary standard placed on the plaintiff by *Pike*, however, makes frivolous litigation unlikely. The plaintiff must show a heavy burden on interstate commerce and must also prove the non-existence of any substantial legitimate local interest. Certainly the experience since *Pike* in other fields does not suggest that there will be greater litigation. Even if such were the result, the desire for avoidance of litigation of constitutional questions should not be permitted to impose a rule which cannot be constitutionally justified.

B. THE "PRESUMPTION" THAT EQUATES VEHICLE SIZE TO SAFETY CAN BE AND HAS BEEN REBUTTED.

The record in this case shows twin trailers to be safe. No statistical study, no officials of any state and no expert witness indicated or testified that twin trailers were less safe than semi-trailers. Faced with this rather bleak evidentiary record, Appellees and Amici suggest that no evidence is needed. A presumption will suffice:

"It is clear that the precedent of this Court well establishes the rule that local regulation of size and weight of motor vehicles is directly related to safety and no evidence need be adduced on this point." Virginia Brief, p. 5

"Early cases recognized that vehicle size affects safety and that excluding larger vehicles promotes safety. *Buck v. Kuykendall*, 267 U.S. 307 (1925); *Morris v. Doby*, 274 U.S. 135 (1927)." Appellees' Brief, p. 13.

It is questionable whether factual conclusions, made some fifty years ago, rise to the level of a presumption.

Even if we assume the presumption to exist, it is not irrebuttable:²

"Presumptions are indulged to supply the place of facts; they are never allowed against ascertained and established facts. When these appear, presumptions disappear." *Lincoln v. French*, 105 U.S. 614, 618 (1882)

A presumption serves only to shift the burden of proof. In this case Appellants have met that burden by developing extensive evidence showing that sixty-five foot twin trailers are safer than fifty-five foot semi-trailers. That evidence is compelling, and it shifted the burden of going forward with the evidence to the Appellees. They could not meet that burden.

C. A STATE LEGISLATIVE DECISION AS TO THE ISSUE OF SAFETY IS SUBJECT TO JUDICIAL REVIEW.

Appellee and Amici suggest that highway safety is so paramount an interest that invocation of it immunizes state regulation from constitutional scrutiny under *Pike*. We concur that highway safety is a crucial and important justification for state regulation. Appellants are not callous creatures of profit who suggest that this Court should seriously doubt the balance between human lives and interstate commerce. Neither was this Court callous in

² Irrebuttable presumptions of fact do exist, but they are disfavored for the obvious reasons. If they are in fact irrebuttable, there is no need to make them legally so. If they are in fact rebuttable, then there must exist the strongest policy reasons for a legal system founded on reason to embrace a fiction. Commonly, they exist where the necessity of determination is great; but the ability of proof difficult, as for instance in the common law factual presumption that all female inheritors under a will are capable of having children. No such policy reason exists in the present case. The issue of safety is an issue susceptible of proof.

enunciating *Pike* as a general standard to be applied in cases where health and safety are raised. If, in fact, Wisconsin's regulatory scheme does "regulate evenhandedly to effectuate a legitimate local interest," such as safety, then, because of the primacy of the interest in human life, the regulation should be upheld under *Pike*'s standard. The question is not whether safety is a legitimate local concern, but whether Wisconsin's ban promotes safety.

In determining whether a state regulation promotes safety in the context of the Commerce Clause, this Court appears to have adopted a two stage test. If the issue is in doubt or the evidence is inconclusive, the Court will defer to the legislative judgment. *Brotherhood of Locomotive Firemen and Enginemen v. Chicago, Rock Island & Pacific R.R. Co.*, 393 U.S. 129 (1968). If the evidence, however, is reasonably conclusive, the Court may determine that "... the total effect of the law as a safety measure in reducing accidents and casualties is so slight or problematical as not to outweigh the national interest in keeping interstate commerce free from interferences which seriously impede it . . ." *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 775-776 (1945); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959). Such is the case here. Appellants have had the burden of producing evidence to show that Wisconsin's ban does not reasonably promote safety. They have done so. Appellees have been unable to introduce any evidence to the contrary.

II. SAFETY

In attempting to assert that the Wisconsin ban promotes safety, Amici and Appellees, in the absence of factual support, have raised a number of hypothetical con-

tentions. There is extensive evidence and testimony in the record disproving each contention raised.

Undiscussed by Amici and Appellees is the most conclusive evidence of all. The United States Department of Transportation and the California Highway Patrol have each conducted extensive studies on twin trailers in operation. Those studies show sixty-five foot twin trailers to have fewer accidents per mile of operation than fifty-five foot semi-trailers. (A. 41, 56-58).³ The studies were conducted or supervised by neutral governmental bodies and their results have not been challenged. They are confirmed by a number of formal and informal state reviews or studies which are referred to by officials from Minnesota (A. 64-66), Kansas (A. 83), North Dakota (A. 155), South Dakota (A. 156-157), Montana (A. 158), Wyoming (A. 160), Idaho (A. 161-162), Oregon (A. 165), Michigan (A. 167) and Colorado (A. 168-169).

Appellees have offered no expert to testify and no study to show that twin trailers are less safe. Their own state officials declined to testify that twin trailers were less safe (see, e.g., A. 250). Indeed, the only Wisconsin official who stated that he had an opinion on twin trailers was James

³ In order to evaluate performance characteristics, Appellants and Defendants alike have compared twin trailer combinations to the 55-foot semi-trailers presently utilized in Wisconsin. This comparison is not done to denigrate the impressive safety record of semi-trailers, for as California Highway Patrol Commissioner A. S. Cooper testified:

"Both are extremely safe vehicles and consistently among the vehicle types with the lowest accident rates. The accident rates for both doubles and semis are much lower than other trucks and the auto." (A. 62)

Nevertheless, the semi does provide a recognizable standard by which other vehicles can be compared (A. 114). The semi also represents a degree of operational safety clearly accepted in Wisconsin.

Karns, the former Wisconsin Motor Vehicle Commissioner. He testified that he had reviewed studies of twin trailers and had concluded that there was no safety reason to ban them, (A. 74-76).

Only the arguments of counsel have been offered to counter the evidence.

Braking Characteristics

This tendency to substitute the arguments of counsel for evidence is clearly illustrated in regard to braking. Amicus, the Association of American Railroads (hereinafter AAR) has argued that the braking capability of a fully loaded twin trailer would be less than that of a fully loaded semi; AAR Brief, p. 5. Amicus Virginia similarly contends that:

"... [T]here is no evidence to reflect what weights the two types of trucks were carrying during the tests which appellants argue support their position. It is difficult to understand how a twin trailer carrying its average load is capable of being stopped as fast as a semi-trailer carrying its average load. The one-third additional weight in the twin trailer has to dictate a longer stopping distance." Virginia Brief, p. 27.

Contrary to Amicus Virginia's assertion, the weights of the test vehicles are in the record. In the tests conducted by the National Safety Council on ice and snow-covered surfaces the twin trailer vehicle's gross weight was 69,140 pounds, that of the semi-trailer type vehicle was 39,660 pounds (Exhibit 3, p. 4, Deposition of Archie Easton). In the California tests on dry roads the twin trailer vehicle weighed 75,240 pounds, the semi-trailer type weighed

43,270 pounds.⁴ In both tests the twin trailers outperformed the semi-trailer type vehicles.

Though Amicus Virginia asserts that "it is difficult to understand" how this can be true, the reasons are in the record. The ability of a loaded twin trailer to stop in an equal or lesser distance than a loaded semi is the result of fundamental differences between twin trailer and semi-trailer equipment. Twin trailers have (1) a more even spacing of the trailer axles; (2) "fast air transmission valves" which allow for simultaneous application of all brakes; (3) a larger "footprint" of the truck tires on the road due to differences in axle distribution and load; (4) the ability to retain control while exerting maximum braking at the front axle; and (5) better stability while braking (A. 36, 61, 67, 96-97, 123-125). These factors combine to make a twin trailer's braking ability superior to that of

⁴ The semi-trailer type vehicle was formed by removing the rear twin trailer weighing 31,970 pounds from a twin trailer combination weighing a total of 75,240 pounds (Exhibit 3, p. 4, Deposition of Fred J. Myers). The weights of 69,140 pounds and 75,000 pounds for the twin trailer vehicles in the two tests are well in excess of appellant Consolidated's average gross weight for loaded twin trailers of approximately 66,000 pounds (A. 323) and were in excess of Wisconsin's 73,000 pound gross weight limit at the time of trial. Wisconsin has since trial increased its gross weight limit to 80,000 pounds, Chapter 29, Laws of 1977, making still greater the difference between the average weight of twin trailers loaded with low density general commodity freight and the maximum weight allowed.

a semi-trailer, notwithstanding the weight differential cited by Amici.⁵

Psychological Impact

Amicus Virginia has hypothesized that:

"... Because of their size, the twin trailer can intimidate and create a fear in the motorist. Such an intimidation can result in a motorist overreacting to emergencies or creating traffic congestion and its attendant hazards because of his uncertainty in approaching or passing such vehicles." Virginia Brief, p. 26; see also AAR Brief, p. 18.

If twin trailers caused an adverse "psychological impact" which resulted in accidents, the statistical studies should show greater twin trailer involvement in accidents. To the contrary, the statistics show 65-foot twin trailers to be less involved in accidents (A. 35, 41, 57-58, 83-84).

The testimony of various state officials also contradicts any "adverse psychological impact." Several of these officials testified directly as to motorist reaction:

⁵ The California tests were conducted by the Western Highway Institute in conjunction with the National Highway Traffic Safety Administration and the California Highway Patrol for the purpose of ascertaining if existing twin trailers could meet the rigorous braking standards of new federal regulations for interstate carriers. Deputy Commissioner Cooper of the California State Highway Patrol testified that twin trailers more than meet the federal braking performance standards (A. 61, A. 106).

The enactment of braking standards by the federal government, 49 C.F.R. §571.121, prevents any state from enforcing stricter braking requirements; 15 U.S.C. §1392(d); *Boating Industry Assoc. v. Boyd*, 409 F. 2d 408 (7th Cir. 1969). Thus, even if twin trailers did not possess superior braking characteristics, Wisconsin could not ban them on that basis alone since they meet the federal standards.

"The South Dakota Highway Patrol has not received any motorist complaints related to the twin trailer configuration of these trucks." Dennis Eismach, Superintendent, South Dakota Highway Patrol (A. 157)

"During his five years as Permit Director, no citizen complaints whatsoever concerning double bottom trucks have been brought to his attention or filed with this office." Robert Hamilton, Permit Director, Oregon Highway Department (A. 165)

"It has been our experience as an enforcement agency that the twin trailer configuration, as well as the sixty-five foot length, has not caused a traffic or accident frequency problem with our state." Col. Fred Wickam, Director, Wyoming Highway Patrol (A. 160)

"A. I handled the safety educational program for the State [of Kansas]. I asked our people at these meetings, at some of the larger meetings, . . . [to] ask them [the public] if they have had any adverse effect of trying to pass or any adverse effect as far as they [twin trailers] were concerned . . . Now, we got no answers adverse but we got answers patting the twin units on the back. The operation of the twin units, they — (interrupted)

A. Now, this is a meeting where your people are talking to — (interrupted)

A. To just citizens' groups, like a Rotary Club or — (interrupted)"

(Deposition of Floyd McCammett, Retired Safety Director, Kansas State Highway Commission, p. 38)

Amici's hypothesis with respect to psychological effects has actually been tested and disproved. Mr. Peter DenHamer, Director of Safety and Engineering for Transport Indemnity Co., referred to a study once conducted on the New York Thruway immediately after the introduction of larger trucks. Observers at various toll booths polled had not noticed the larger trucks (Deposition of Peter DenHamer, p. 20). As Mr. DenHamer explained:

" . . . [I]t is difficult for anybody to stand alongside or look at a combination or tractor and trailer and tell me if that is 55, 60 or 65 feet long." (Deposition of Peter DenHamer, pp. 20-21)

Assistant Commissioner Marshall of the Minnesota Department of Highways similarly testified:

"Q. How has the public reacted to twin trailers in Minnesota?

A. I think the general public in Minnesota is unaware, or cannot differentiate a twin trailer from a single semi rig. At least no one has complained to me about twin trailers on the highways." (Deposition of Francis Marshall, p. 10)

Passing

The evidence shows that, given a 10 m.p.h. speed differential, passing a twin trailer takes only two-thirds of a second longer than passing a 55-foot semi. (A. 62, 94, 116, 144)⁶

The District Court and Appellees both assert this delay in passing to be the principal factual safety objection to twin trailers. They did so despite extensive expert testimony as to the significance of this delay. The District Court apparently failed to consider that the passing of twin trailers would only occur on four lane divided highways. All of the witnesses who testified as to the passing time uniformly agreed that this fraction of a second additional passing time is insignificant:

⁶ Since the date of trial, Wisconsin has raised the maximum length for semi-trailers, without permits, to 59 feet; Chapter 29, Laws of 1977; thereby reducing the passing time differential to four-tenths of a second; 60% of the previous time. Even if one were to assume a speed differential of only one mile per hour, the passing time would be increased by only four seconds.

Col. Crawford (Minnesota State Patrol) stated:

"You're really only talking about ten feet, you know, difference, and the passing time for that ten feet is not that significant." (A. 69)

Commissioner Cooper (California Highway Patrol) stated:

"Although passing time has not been measured by the California Highway Patrol, a study by the U.S. Department of Commerce [H.R. Doc. No. 354, 88th Cong., 2nd Sess. 93 (1964)] indicated that vehicles up to 75 feet would not have a significant effect upon the safety potential of the usual passing operations on a two-lane facility. As such, the time required to pass a 65-foot double would not create a more significant hazard than the time required to pass other trucks and buses." (A. 61)

Mr. Marshall (Minnesota Department of Highways) stated:

"We are talking ten foot longer length trailer, or total combination, and in passing we are talking probably a second or so, and I don't think — we haven't heard any complaints from the people on anything in this respect." (A. 72)

Claud McCammet, (Retired Safety Director, Kansas State Highway Commission) stated:

"... [W]e finally studied every section of the highway system over which they had sought approval, and there was some six thousand miles that were studied, and most of the sections that we studied had terrain that was hilly, was curvy, and we found that the units, the people were able to pass the [twin trailer] units, much to our amazement, without any great difficulty." (A. 81)

Moreover, since this lawsuit is concerned only with the Interstate Highway system which has at least two lanes in either direction so that a passing vehicle faces no oncoming traffic, the time difference carries even less significance.

Mr. Sherard (Chief Engineer, Western Highway Institute) testified:

"Q. Do you have an opinion as to whether the additional 10 feet in length of a twin over the length of a semi, both operating on a four-lane divided highway, constitutes a safety hazard?

A. I don't think it does.

Q. That is your opinion?

A. That is my opinion, that it doesn't. We are talking about an interstate highway?

Q. Right.

A. Four-lane divided highway?

Q. Correct . . ." (A. 128)

Mr. Myers (Retired Chief Engineer, Western Highway Institute) stated:

"I don't think it is of any importance on a multiple lane highway when the vehicles are traveling in the same direction." (A. 94)

Amici and Appellees assert that the additional passing time has added significance during inclement weather. Appellees state flatly: "The safety factors are obvious," Appellees' Brief, p. 13-14; see also Virginia's Brief, p. 27 and AAR Brief, p. 5.

The record indicates that it would be less hazardous to pass a twin trailer than a 55-foot semi-trailer in inclement weather. The 65-foot twin trailer puts out 20% *less splash*

and spray in a pattern that is *neither as high nor as wide* as that of a 55-foot semi-trailer. Moreover, the splash and spray of trucks is principally located at two points, the rear of the tractor and the rear of the truck.⁷ Increasing the length of the vehicle thus does not lengthen the time a passing vehicle spends in the two areas of maximum density.

In tests conducted by the Western Highway Institute and Southwest Research Institute the splash and spray characteristics of various vehicles were compared. Those tests showed 65-foot twin trailers to have the best splash and spray characteristics of any of the vehicles tested.⁸ The tests showed splash and spray from a twin trailer to be more limited in its spread so as to reduce the probability of its reaching a passing vehicle in an adjoining lane. The tests also showed splash and spray from a twin to be less likely to reach the windshield of a passing car because it was not lifted as high by vehicle generated air currents. Finally, the tests showed twin trailer splash and spray patterns to be less dense and thus to have less potential to obscure the vision of a passing driver (A. 109-120; Exhibits 2 and 3, Deposition of Thurman Sherard).

Two state officials, testifying as to actual experience with twin trailers, spontaneously mentioned the improved splash and spray characteristics of twin trailers:

⁷ Much of the increased splash and spray of semi-trailers is the result of the tandem axle arrangement, which creates turbulence and splash and spray as the adjacent wheels throw water into each other. Twin trailers do not have tandem axles (A. 113-120, Exhibit 2, Deposition of Thurman Sherard).

⁸ Eleven vehicle types were tested. The worst three, a tank truck, auto transporter, and 55-foot semi-trailer, are all routinely allowed on Wisconsin highways. (A. 135; Exhibit 2, Deposition of Thurman Sherard).

"We followed these units under all types of adverse weather conditions. The semi puts out a much greater spray than the twin trailers. Now, I am not a scientist, I don't know just why, but in our study we found that the twin trailers did not put out nearly as much spray and muck and stuff . . . as did the semi units . . ." Claud McCammet, Retired Safety Director, Kansas State Highway Commission (A. 84-85)

Assistant Minnesota Highway Commissioner Francis Marshall testified:

"The greatest complaint we hear from passing commercial vehicles is the blow-out from the wheels of snow and rain causing poor visibility while you are passing, and I have observed on twin trailers . . . the two trailers seem to hold that blow-out in a little more." (A. 72-73)

The comments of Amici with respect to passing in inclement weather completely ignore the question of splash and spray patterns; Virginia Brief, p. 27; AAR Brief, p. 5.

The studies and independent observations of the splash and spray problem show an obvious benefit to the use of twin trailers, as opposed to tandem axle semis, on Interstate Highways.

Accident Severity

Amicus Virginia has argued:

"[T]he weight of a vehicle has a direct bearing upon the severity of its impact potential in an accident." Virginia Brief, p. 26, see also AAR Brief, p.5.

Both Amici imply that collisions with twin trailers would be more severe than collisions with semi-trailers.

If this implication had merit, the accident statistics would show a consistently higher frequency of fatalities and injuries in accidents with twin trailers. To the contrary, statistics gathered by the U.S. Department of Transportation, comparing twin trailers and 55-foot semis in actual use by general commodity carriers over similar routes, show twin trailers to have consistently fewer injuries per accident, and to have fewer fatalities per accident in three of the five years surveyed (A. 41). The average of five years experience shows twin trailers had .075 fatalities/accident and .83 injuries/accident, as opposed to a rate of .079 fatalities/accident and .95 injuries/accident with 55-foot semi-trailers (A. 41).⁹

The laws of physics and the earlier discussion of braking explain why the accident severity statistics for twin trailers are better than those of semis: speed has far more effect than weight in an accident. The superior braking performance of twin trailers results in a slower speed at the point of impact, thereby lowering the speed component of the formula, and more than compensating for any additional weight. In a vivid example Professor Easton explained:

"Q. Taking the example of the Volkswagen colliding with a twin-trailer, 65-feet in length, or a conventional unit in the configuration of a 2-S1, and assuming, in addition, a straight course braking similar to that in Table I of Exhibit No. 4, with the braking applied at the same distance from the Volkswagen in each case, would the energy at impact for the twin-trailer unit be less than for the . . . tractor semi-trailer unit?

⁹ Twin trailers were also less frequently involved in accidents. On a five year average, twin trailers experienced .642 accidents per 1,000,000 miles traveled, as opposed to .862 accidents/million with semis (A. 41). Since each twin trailer carries more cargo per mile, a comparison of accident frequency based on cargo miles would be even more favorable to twin trailers.

A. The energy at impact, assuming that the distance between the point where the vehicle started braking and the Volkswagen was less than 356 feet, the speed of the 2-S1-2 [twin trailer] at the time of impact would be less than that of the 2-S1 [semi-trailer]. Therefore, the damage potential would be less in the case of the 2-S1-2 [twin trailer].

Q. And, of course, if the distance from the Volkswagen at the time of application were 360 feet, there would have been no collision in the case of the twin-trailer unit?

A. There would have to be 356 feet. There would be no collision then." Deposition of Prof. Easton, pp. 22-23

While differences in weight between twin trailer loadings and semi-trailer loadings depend upon the carrier, Raymond indicates a weight increase of about 8000 pounds might be possible (A. 373). Consolidated Freightways' actual experience shows a weight differential of about 3,500 pounds (A. 323). Even using the larger weight differential, the additional kinetic energy generated is offset by less than a 3 mph speed reduction. In other words, a 58,000 pound semi-trailer traveling at 55 mph would have approximately the same impact as a 66,000 pound twin trailer traveling at 52 mph.¹⁰

¹⁰ The kinetic energy of impact varies directly with the mass, but varies with the square of the velocity. Thus a small velocity change has much greater effect than a relatively large change in mass. The formula for calculation is $\text{Energy} = \frac{1}{2} \times \text{Mass} \times (\text{Velocity})^2$ (A. 144, 126, Deposition of Leon Robertson, p. 16). Substitution of the appropriate figures shows a difference of about 3 mph in velocity offsets the 8,000 pound difference in mass between 58,000 and 66,000 pounds.

Other Safety Questions

The AAR has stated:

"Various witnesses expressed opinions that 65-foot twin trailers are as safe as or safer than, 55-foot semi-trailer combinations (A. 52-53, 56-57, 64-65, 70-71, 99, 141, 143, 157, 161-162, 169), but there was no evidence that they are as safe as 55-foot twin trailer combinations." AAR Brief, p. 5.

"... [N]othing in Wisconsin's law prevents them from using twin trailer combinations having an overall length of 55 feet or less." AAR Brief, p. 32.

Both quotes are false.

Wisconsin Admin. Code §Hy 30.14(3)(a), the administrative regulation challenged here, forbids general commodity carriers the use of twin trailers of *any* length.

In the first quote, the AAR has overlooked the evidence of Ernest Cox, former Deputy Director, Bureau of Motor Carrier Safety, United States Department of Transportation (A. 50-52). Mr. Cox explained that the ICC does not permit explosives to be carried in twin trailers less than 65 feet long because, such shorter twin trailers "... had displayed instability ..." and, in Mr. Cox's judgement, "... there had not been sufficient demonstration that they would operate in a sufficiently stable manner and track adequately to avoid mishaps ..." Mr. Cox added that these drawbacks did not occur with the 65-foot twin trailer. (A. 50-52).

Beyond the factual and legal contradictions of Amicus' assertions, Amicus has simply missed the point. Sixty-five feet is not a size selected at random by the Appellants.

Sixty-five foot twin trailers are the the industry standard for carriage of general commodity freight. (A. 324) This standard is recognized by the American Association of State Highway and Transportation Officials, which, in its current policy statement, recommends that all states adopt length limitations allowing 65-foot twin trailers (A. 107-108).

Wisconsin's Ban Actually Detracts From Safety

In all of their discussions of safety, Appellees and Amici have avoided the issue of traffic reduction as it relates to safety. At present, because of the ban, general commodity carriers operate twin trailers through Wisconsin as two separate units, divert traffic around Wisconsin thereby increasing the total miles traveled, and operate semi-trailers thereby increasing the number of vehicles for a given amount of cargo. These alternatives increase the safety hazard by increasing the number of vehicles and the number of miles of operation.

The facts are closely analogous to that in *Southern Pacific v. Arizona*, *supra*. There the Court concluded that there was no increase in frequency of accidents or accident severity because of an increase in the length of a train. Moreover, the decrease in the number of trains would have reduced accident exposure:

"As the trial court found, reduction of the length of trains also tends to increase the number of accidents because of the increase in the number of trains. The application of the Arizona law compelled appellant to operate 30.08% or 4,304, more

freight trains in 1938 than would otherwise have been necessary. And the record amply supports the trial court's conclusion that the frequency of accidents is closely related to the number of trains run." *Southern Pacific Co. v. Arizona*, 325 U.S. 761,777 (1945).

The record discloses in this case that Appellant Raymond Transportation must make approximately 33% or 1,560 more trips annually because of the Wisconsin ban.¹¹ (A. 374) Appellant Consolidated Freightways increased operations are more difficult to state precisely because of its diversions through Missouri and use of the shuttle operation. At a minimum the shuttle operation doubles the number of vehicles and mileage through Wisconsin, if the east-west and west-east flow is balanced so as not to require runs of tractors without trailers. The added mileage due to shuttle runs is 1,226,620 miles annually.¹² From June, 1974 through June of 1975, there were a total of 13,624 runs diverted through Missouri, totalling 2,702,178 additional miles of operation.¹³ The use of semi-trailers on routes, such as Detroit to Minneapolis, where twin trailers would normally be used, adds 209,514 miles of operation. The operating statistics of twin trailers

¹¹ Actual reductions would be somewhat less because on "some occasions" semi-trailers would still be used for articles longer than 27 feet and on "rare occasions" for extremely dense freight (A. 374).

¹² Exhibit REW-A, p. 2, Deposition of R.E. Wrightson.

¹³ Page 1, Schedule REW-D of Deposition of R.E. Wrightson. The figures on the schedule are estimates derived by dividing total cargo movement by average load. The number of schedule trips (6,812) given on the exhibit is for one-way traffic, and would be doubled for a total figure.

for 1973 in the U.S. Department of Transportation study (A. 41) would indicate that the additional 4,138,312 operating miles caused by Wisconsin's ban will result in 3.14 additional accidents each year for Appellant Consolidated Freightways alone. Other general commodity carriers have a similar increase in their accident exposure (A. 379).

As is indicated by the mileage figures for diversions through Missouri, many of these accidents resulting from Wisconsin's ban occur in states other than Wisconsin.

III. BURDEN

Appellees and Amici have largely avoided discussing the burden on interstate commerce imposed by Wisconsin's ban. That burden is great in magnitude — the cost to Appellants alone exceeds \$2,000,000 annually — but more pertinent is the nature and character of that burden. Wisconsin's ban disrupts a nationwide transportation system.

Because the transportation system is national, Wisconsin's disruption of that system affects the commerce and citizens of other states. Because rates are set on a regional basis, citizens of other states pay the direct financial costs of Wisconsin's ban even on shipments which have no relation to Wisconsin (A. 351-359). Equally important are the intangible losses caused by reductions in the quality, timeliness and availability of transportation over the entire length of I-90 and I-94 from Detroit to Seattle (Appellant's Brief, pp. 27-34, A. 307-314).

Wisconsin directly imposes on other states by increasing traffic within those states through diversion of Wisconsin

traffic (A. 313), the forced use of semi-trailers in other states (A. 311), and the operation of staging areas in Illinois and Minnesota for the shuttling of twins through Wisconsin (A. 308-311)¹⁴.

It is this extraterritorial effect which this Court found to be particularly objectionable in *Southern Pacific Co. v. Arizona*, *supra*:

"If one state may regulate train lengths, so may all the others, and they need not prescribe the same maximum limitation. The practical effect of such regulation is to control train operations beyond the boundaries of the state exacting it because of the necessity of breaking up and reassembling long trains at the nearest terminal points before entering and after leaving the regulating state. The serious impediment to the free flow of commerce by the local regulation of train lengths and the practical necessity that such regulation, if any, must be prescribed by a single body having a nation-wide authority are apparent." 325 U.S. 761, at 775.

Appellees' only comment on the burden is to suggest that it is different from that in *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959) because "interlining" is not interfered with. "Interlining", or more properly, "interchanging", is the process of transferring equipment between carriers to permit service beyond the routes of an individual carrier.¹⁵ It is a common process. In 1974, 35.7% of Appellant Consolidated's shipments were interchanged or interlined with other carriers. (A. 322)

¹⁴ Additionally, the inefficiencies created by Wisconsin's ban results in unnecessary losses of national energy resources (A. 183-184, 279-286).

¹⁵ "Interlining" properly refers to a transfer of cargo to another carrier for transportation in his equipment. In *Bibb v. Navajo Freight Lines, Inc.*, *supra*, this Court used the term "interline" where "interchange" would now be the appropriate term.

In *Bibb* interchanging would have required substitution of mudflaps. Wisconsin's twin trailer ban imposes a greater obstacle to interchanging. The tractor equipment for semi-trailers and twin trailers is not compatible. (A. 311-312, 344-345, 375). Wisconsin's ban requires carriers going to, from or through Wisconsin to maintain semi-trailer equipment.¹⁶ They cannot interchange the trailer of the semi unit with a carrier who operates outside of Wisconsin and may have available only tractors for twin trailer units, and they cannot interchange a trailer of a twin trailer unit with a carrier who may only have available tractors for semi-trailer units. Thus equipment incompatibility interferes with interchanging between carriers (A. 344-349, 368-372, 380).¹⁷

IV. THE ISSUE OF "BALANCING" VARIOUS MODES OF TRANSPORTATION IS NOT BEFORE THIS COURT.

Amicus Virginia has asserted that Wisconsin's ban is justified because a state may legitimately place restrictions upon one mode of transportation, such as trucks, in order to promote another mode, such as railroads.

¹⁶ It would be possible to maintain just twin trailer equipment, always operating it in Wisconsin in single tractor - single trailer units. The economics of such inefficient operation, however, dictates some use of fifty-five foot semi-trailer equipment (A. 311, 371-373).

¹⁷ It also interferes with interchangeability of equipment within a single carrier (A. 344-345). Appellant Raymond Motor Transportation, whose sole contact with Wisconsin is the movement of goods between Illinois and Minnesota, must maintain a large fleet of incompatible semi-trailer equipment and attempt to coordinate use of that equipment with the twin trailer equipment it uses in Illinois, Minnesota, and North Dakota (A. 268-372, 380).

That justification is not, however, at issue in this case. Wisconsin has denied that it has any *justification or reason for its ban other than safety*.¹⁸

Even were the matter at issue, the record fails to support the argument. General commodity carriers, such as Appellants, carry small units of cargo — in 1974, 98.4% of Appellant Consolidated's shipments were under 10,000 pounds (A. 318). There is no real competition for these less than carload shipments. As was observed by one witness:

"Many of these [small] communities have been long abandoned by the railroads, and it should also be noted that the railroads, for the most part, no longer accept less than carload shipments." Arnold Foslien (A. 362).

Mr. Robert E. Hemphill of the Federal Energy Administration in discussing the impact of general use of twin trailers in Wisconsin stated:

"Although rail freight is generally less energy intensive in areas with flat terrain such as Wisconsin, it is doubtful that the introduction of twin-trailers in one additional state in the region will greatly influence modal choice of long distance freight and shift traffic from the railroads." (A. 285)

¹⁸ In a Pretrial Conference Order the District Court ordered the Appellees to amend their answer, stating therein "... every justification for the challenged regulation ..." (A. 25). Appellees responded in an amended answer stating the sole justification to be safety. (A. 27-29)

Thus use of twin trailers through Wisconsin by general commodity carriers will not significantly affect railroads.¹⁹

The AAR makes the novel argument that this court in construing the Constitution must protect railroads from competition (AAR Brief, pp. 8, 41-42). No constitutional provision exists requiring that the *status quo* of competition between methods of transportation must be maintained. Certainly the proposition is not one that this Court has ever followed in holding a burden on interstate commerce unconstitutional, e.g. *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959).

¹⁹ The AAR fabricates an argument for railroads being affected by this case. The argument relies on misrepresentations of facts both within and without the record:

Amicus states its members had gross intrastate operating revenues in Wisconsin of about \$291 million (AAR Motion, p. 2). The actual figure, according to the sworn statements of the railroads filed with the Wisconsin Public Service Commission is slightly over \$24 million, see Appendix A.

Amicus AAR gives the source for its figures on net return on worth for railroads as the *Citibank Monthly Newsletter*, April, 1977. (AAR Brief, p. 8, f.n. 3) The actual source is the AAR, see Appendix B, f.n.(f).

Amicus cites Robert E. Hemphill as support for their argument that twin trailers would cause railroads competitive damage (AAR Brief, p. 8) Mr. Hemphill actually said "... it is doubtful that the introduction of twin-trailers ... will ... shift traffic from the railroads." (A. 285)

Amicus compares railroads and motor carriers based on return upon net worth — an inappropriate comparison given the differences in capital requirements of the two industries. Phillips, *The Economics of Regulation* (Irwin, 1969) pp. 271-275; *In re Middle West General Increases*, 48 M.C.C. 541, 552-53 (I.C.C., 1948).

V. THE INACTION OF CONGRESS DOES NOT ALTER THE TEST TO BE APPLIED IN THIS CASE.

Amicus the Association of American Railroads has included in its brief much material relating to Congressional debates on limitations on truck sizes and weights. Lost in that mass of material is the simple, salient, and pertinent fact: *Congress has never enacted legislation concerning the length of trucks on Interstate Highways.* Congress has placed limitations on the width and weight of trucks, 23 U.S.C. §127, but Congress remains silent on length limitation.²⁰

Amicus suggests that the comments of individual senators are appropriate to determine what this silence means. Comments of individual legislators are, however, not competent evidence to show the intent of Congress.

"By repeated decisions of this court it has come to be well established that the debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the lawmaking body. *Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 474 (1921).²¹

²⁰ Weight and width of motor vehicles require uniformity in order to permit uniformity of design and construction of Interstate Highways, as well as avoiding premature wear of the Highways. Length of vehicles is not a similar factor in highway design or maintenance.

²¹ Amicus repeatedly quotes Senators Gore and Kerr in support of its views. Though a sponsor's comments may be used to discern the meaning of a statute, the rule would not appear applicable to proposed legislation which failed to pass or even to the sponsor of the amendment removing the proposed section in question from the final bill.

Interpreting the silence of Congress is a difficult proposition. Congress' silence may express a willingness for the states to regulate individually, limited only by the general prohibitions of the Commerce clause, or it may express a desire that the matter be left free from regulation entirely.²²

The situation presented by this case is precisely the situation that confronted the Court in *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945). There Congress had enacted a number of laws regulating trains, had had before it legislation to establish a maximum limit on train length, but had declined to act. Chief Justice Stone analyzed the meaning of Congress' refusal to act and the application of the Commerce Clause in its absence:

"For a hundred years it has been accepted constitutional doctrine that the commerce clause, without the aid of Congressional legislation, thus affords some protection from state legislation inimical to the national commerce, and that in such cases, where Congress has not acted, this Court, and not the state legislature, is under the commerce clause the final arbiter of the competing demands of state and national interests.

. . .

... [I]n general Congress has left it to the courts to formulate the rules thus interpreting the commerce clause in its application, doubtless because it has appreciated the destructive consequences to the commerce of the nation if their protection were withdrawn, and has been aware that in their application state laws will not be invalidated without the support of relevant factual material which will "afford a sure basis" for an

²² Mr. Thomas Reed Powell, former counsel for the Association of American Railroads, considered the difficulty of interpreting congressional silence in a delightful article, "The Still Small Voice of the Commerce Clause," 3 *Selected Essays on Constitutional Law* 931 (1938).

informed judgment. Meanwhile, Congress has accommodated its legislation, as have the states, to these rules as an established feature of our constitutional system. There has thus been left to the states wide scope for the regulation of matters of local state concern, even though it in some measure affects the commerce, provided it does not materially restrict the free flow of commerce across state lines, or interfere with it in matters with respect to which uniformity of regulation is of predominant national concern." 325 U.S. 761, 769-770 (citations omitted).

VI. DISCRIMINATION

Appellees and Amici have responded to the showing of discrimination in the record in three fashions. They have somewhat ingenuously argued that it does not exist; they have argued that the discrimination is justified for various reasons; and they have argued that Appellants have no standing to raise the issue.

A. DISCRIMINATION EXISTS IN WISCONSIN'S REGULATORY SCHEME.

The record indicates that Wisconsin's regulatory scheme discriminates against interstate commerce in two ways. First, it blatantly discriminates by granting Wisconsin industries and their agent motor carriers an exemption from the size limits "in connection with interplant, and from plant to state line, operations in this state". Wis. Stats. §348.27(4) (1975). Appellees assert that these interplant permits are not discriminatory because shipments from Wisconsin industries to the state line are, in fact, interstate shipments. Clearly discrimination exists whenever the state exempts its own trade from burdens while imposing those burdens upon trade from other states, *Hunt v. Washington Apple Advertising Commission*, 53 L. Ed. 2d 383, 399 (1977).

Second, the regulatory scheme discriminates by exempting from regulation industries and commerce important to Wisconsin while retaining the general limits on commerce not significant to Wisconsin. That discrimination is subtle, apparent only in its effect rather than from the face of the statute. But it is of significance in the context of the Commerce Clause; for, if permissible, it removes an internal political check on state action:

"The present regulations, or any others of like purpose, if they are to accomplish their end, must be applied alike to interstate and intrastate traffic both moving in large volume over the highways. The fact that they affect alike shippers in interstate and intrastate commerce in large number within as well as without the state is a safeguard against their abuse." *South Carolina State Highway Department v. Barnwell Bros., Inc.*, 303 U.S. 177, 187 (1938).

If a state may respond to its own interests separately from those of the nation, *Barnwell's* political check will not work. Wisconsin will satisfy its domestic interests, such as paper, agricultural machinery manufacturing, automobile manufacturing, and milk production, thereby relieving domestic political pressure, without being required to respond to the needs of interstate commerce.

Neither Appellees nor Amici have denied the existence of the exemptions for industries important to Wisconsin. Instead, they argue there is no discrimination because these exemptions are available to residents and non-residents alike.

Discrimination, however, need not exist on the face of the statute; it is the effect which is at issue, *Hunt v. Washington Apple Advertising Commission*, 53 L. Ed. 2d 383 (1977), *Dean Milk Co. v. City of Madison*, 340 U.S. 349

(1951); *Best & Co. v. Maxwell*, 311 U.S. 454 (1940); *Baldwin v. G.A.F. Seely, Inc.*, 294 U.S. 511 (1935); *Minnesota v. Barber*, 136 U.S. 313 (1890). The effect of Wisconsin's exemptions is to apply limits to commerce generally while exempting those aspects of commerce important to the State.²³ The discrimination is not "artlessly disclosed" but its *practical effect* is to burden interstate commerce while removing that burden from local commerce.

B. NO JUSTIFICATION EXISTS FOR WISCONSIN'S DISCRIMINATION.

Appellee and Amici have argued that many of Wisconsin's exemptions are justified by necessity, by limited use of the highways or by special conditions. We agree. The state may permit occasional uses of its highways by oversized vehicles such as farm combines, or vehicles carrying oversized indivisible articles such as telephone poles or bridge girders. Necessity and infrequency of use are valid justifications for discrimination.

²³ The general discriminatory pattern is illustrated at Footnote 30 of Appellant's brief. An example of the responsiveness of the State to its own economic interests is in the record (A. 210-212). Wisconsin has created an exemption, Wis. Admin. Code §Hy 30.14(3)(a), which permits a Wisconsin manufacturer of twin trailers to operate empty twin trailers, *in combination*, on two lane and Interstate Highways in Wisconsin, see also, f.n. 28, *infra*.

But Wisconsin goes much farther. No justification of necessity or limited use exists for the exemption for sixty-five foot automobile carriers,²⁴ the interplant exception,²⁵ the general exemption for tie logs and slabs,²⁶ the broad exemption for agricultural implements,²⁷ the exemption for forest products²⁸ or the exemption for twin trailer dairy trucks.²⁹ All of these are physically divisible loads and all make frequent and regular use of the highways.

²⁴ Wis. Stats. §348.27(5).

²⁵ Wis. Stats. §348.27(4).

²⁶ Wis. Stats. §348.05(2)(k).

²⁷ The broad agricultural exemption, Wis. Stat. §348.25(4)(b) should not be confused with a narrow exemption for husbandry implements designed to permit farmers to temporarily operate machinery on the highway, Wis. Stat. §348.07(2)(e). §348.25(4)(b) permits agricultural machinery manufacturers to ship their products in vehicles five feet longer than the general limit.

²⁸ Wis. Stats. §348.27(5). Note that this exemption does not require individual "peeled or unpeeled forest products" to be oversized. This exemption is the direct result of the Highway Commission denying a permit for oversized loads of logs to a Wisconsin chipboard manufacturer. In denying the permit, the Highway Commission suggested he seek legislative relief (Exhibit 19, Deposition of Wayne Volk, p. 41). His state legislator then introduced the bill to amend §348.27(5) by including this exemption, Wis. Legis. Bulletin-Senate Dec. 11, 1976, Senate Bill 34, p. 51. The exemption permits paper manufacturers to haul pulpwood in oversized trucks.

²⁹ Wis. Admin. Code §Hy 30.18(3)(a), §30.01(3).

Amicus argues that many of these uses are limited by special restrictions whereas Appellants seek "unhampered" use of their twin trailers, Virginia Brief, p. 32-33. Reference to Exhibit B of the Complaint will show that similar special restrictions would be applied to Appellants' operations.³⁰ Amicus somewhat lamely contends that these exemptions are limited in use, e.g.:

"First, the vehicles can be operated only temporarily or infrequently upon the highway. Second, even though highway use may not be infrequent, the average haul tends to be for relatively short distances. For example, an industrial interplant permit was issued to American Motors to carry car bodies in trucks for a distance of forty-five miles." Virginia Brief, p.31-32.

Neither argument is true. In regard to the American Motors permit the testimony was that 22 tractors and 21 trailers are operated continuously on a "round robin" basis every weekday. (Deposition of Wayne Volk, p. 66). Nor are permits limited to short distances. Carver Boat Co. for instance, possesses an interplant permit allowing it to transport small boats from Pulaski, Wisconsin (near Green Bay) to the Michigan, Minnesota and Illinois borders. (A. 232-234). The only limitation of distance is that of the geographic location of the permittee and the size of Wisconsin.

Amicus Virginia similarly confuses Wisconsin law in its discussion of other permits. It asserts the permit for oversized implements of husbandry to be permissible be-

³⁰ Wisconsin would apply basically the same restrictions to Appellant's twin trailer operations as to other permitted uses, Wis. Admin. Code §30.14(5). Appellants requested waiver of certain restrictions, e.g. restrictions on time of operation. The Highway Commission does on occasion waive some of its special restrictions (Deposition of Wayne Volk, pp. 10-11).

cause of limited use, but does not address the far broader manufacturers' exemption for up to two implements on a vehicle five feet longer than the general limit, Wis. Stats. 348.25(4)(b).³¹ Amicus asserts the reasonableness of the seasonal operation of forest product vehicles over frozen roads, but does not address the general permit for peeled and unpeeled forest products in Wis. Stats. §348.25(5). Amicus asserts the obvious reasonableness of overweight dairy permits during an energy emergency, but does not address the twin trailer exemption for milk, Wis. Admin. Code §§ Hy. 30.18(3)(a), 30.01(3). Amicus brazenly asserts that the permit for sixty-five foot auto carriers is one of necessity.³²

Finally Amicus reasserts that Wisconsin does not permit oversize permits for vehicles and loads "which cannot reasonably be divided, or reduced to comply with statutory size, weight, or load limits". The administrative interpretation of that clause is in the record (A. 194-195, 200, 202-204, 210-212, 215-216, 258-261) and shows that the Highway Commission interprets "reasonably divided" in an economic sense. Beer cans, car bodies, car frames, and small boats are examples of loads for which the Highway Commission has granted overlength permits notwithstanding the "reasonably divided" restriction. (A. 194-195, 228-232, 259-260, 199-200, 205, 232-234).

The total numbers and use of the permits granted under the regulatory scheme further belies any argument of limited use of rare exception. In 1975 there were a total of 3,077 permits for oversized automobile carriers. (A. 179)

³¹ See f.n. 27, *supra*.

³² Aside from the obvious divisibility of the load, Virginia itself does not permit sixty-five foot auto carriers, §46.1-330 Code of Va. (1950).

Under this type of permit a single auto carrier company operated 6,376,305 miles in Wisconsin in 1975, principally with 65 foot semi-trailer vehicles (A. 275). There were a total of 12,268 permits in 1975 which were "general annual permits", unlimited as to amount of use (A. 180; 253-254).³² Over a three year period the total number of general annual permits and annual vehicle transportation permits equalled 40,582 (A. 179, 180). Certainly these figures — for permits unlimited as to mileage or number of trips — suggest something more than occasional and limited use of the highways.

Appellees have asserted an additional justification. Wisconsin, Appellees argue, may exercise its police power to promote certain local industries (Appellees Brief, p. 6, 7). Whether or not the state may promote one local economic interest over another is irrelevant. The effect of Wisconsin's regulatory scheme is to favor local economic interests over the interests of interstate commerce, when there is no distinction between the two in terms of frequency of use, safety, or road wear.³³ The mere invocation of the police power will not legitimize a regulation which discriminates against interstate commerce:

³² Additionally in 1975 there were 1,915 annual mobile home permits and 5,818 single trip permits, limited as to use (A. 178, 181).

³³ Though the highway cases cited by Appellees contain language suggesting that the promotion of local interests is a valid criterion for discrimination, each highway case also shows that the court discerned differences in safety or road wear between the exempt and non-exempt classes. *Wisconsin Truck Owners Asso. v. Public Service Commission*, 207 Wis. 664, 674, 242 N.W. 668 (1932); *State v. Wetzel*, 208 Wis. 603, 611, 243 N.W. 768 (1932). The holding in *Oregon v. Pyle*, 226 Ore. 485, 360 P. 2d 626 (1961) was specifically limited by the Idaho Supreme Court to its alternative grounds of use of unpaved roads and difficulty in weighing log trucks in a later Idaho case, *Sterling H. Nelson & Sons, Inc. v. Bender*, 520 P. 2d 860 (1974).

"By the same token, however, a finding that state legislation furthers matters of legitimate local concern, even in the health and consumer protection areas, does not end and the inquiry. Such a view, we have noted, 'would mean that the Commerce Clause of itself imposes no limitations on state action . . . save for the rare instance where a State artlessly discloses an avowed purpose to discriminate against interstate goods.' *Dean Milk Co. v. Madison*, 340 U.S. 349, 354, 95 L. Ed. 329, 71 S. Ct. 295, (1951)." *Hunt v. Washington Apple Advertising Comm.*, 53 L. Ed. 28, 383, 398-399 (1977)

C. PLAINTIFFS HAVE STANDING TO RAISE THE ISSUE OF DISCRIMINATION.

In regard to Wisconsin's blatant discrimination in its interplant permits, the principal argument of Appellees and Amici is that Appellants lack standing to raise the issue. Only, Appellees argue, if Appellants were non-Wisconsin *industries* could they raise the issue of discrimination. The statute, however, defines the favored class as Wisconsin industries and their *agent motor carriers*. Appellants are the agent motor carriers for a number of foreign industries shipping to and through Wisconsin and thus possess direct standing to raise the issue, (A. 315, 378).

Even were this not the case, Appellants would still have standing. Interplant permits are but one part of a complex scheme of exemptions which result in Wisconsin commerce being freed from the burdens of the regulatory scheme, while imposing those burdens on interstate commerce. That scheme has the effect of burdening Appellants' interstate operations, and they thereby possess standing to raise the issue of discrimination.

VII. THE RELIEF REQUESTED BY APPELLANTS

Amici have engaged in the device of misstating the relief requested in order to provide a basis for their arguments. The most egregious offender is the Association of American Railroads:

"Moreover, Appellants in effect are requesting this Court to overrule its many prior decisions establishing the primary right of the individual States to regulate the maximum size and weight of motor vehicles operating on their highways, and to interpret the Constitution as authorizing the courts to establish uniform federal maxima in regard to interstate highways, limited only if at all by the highest maximum established by any State." AAR brief, p. 7.³⁴

Amicus Virginia also mischaracterizes the requested relief:

"At a minimum what the Appellants request is an absolute and unhampered grant to transport their trailers upon the Interstate Highways and connecting roads throughout the State." Virginia brief, p. 33.

Appellants' sole requested relief is that Appellees grant a permit to Appellants to operate the standard 65-foot twin trailer through Wisconsin on the specified Interstate Highways, I-90, I-94, and I-894 from the Illinois border to the Minnesota border. In addition Consolidated Freightways has requested in its permit consent to operate from its terminals in Madison and Milwaukee to the Interstate Highways over distances of approximately four miles and

³⁴ Amicus AAR repeatedly, as in the quoted section, uses the term "interstate highways" rather than Interstate Highways, for the purpose of implying the relief to be far greater than that requested.

one mile respectively, all of the route being on four-lane divided highways, (Complaint, Exhibit B). Those permits would be subject to a number of limits, including proof of extra insurance coverage, special lighting requirements, and the power of the Commission to suspend the permit for cause or during an emergency.³⁵

Appellees and Amici appear to have assumed that, if this Court applies the *Pike v. Bruce Church* standard to highways, or finds discrimination, the result will be the total collapse of state highway regulations. Such is a misapprehension. Many of the facts in this case are unusual:

1. Appellees can show no safety justification for the ban. There is conclusive evidence showing twin trailers to be safe.
2. The equipment banned is of peculiar importance to interstate general commodity carriers because of their need for equipment standardization and their type of operation. Thus, Wisconsin's ban disrupts a national transportation system.
3. The only highways at issue are Interstate Highways which are uniform in design and construction.
4. Wisconsin's geographic location on a principal East-West route of interstate commerce, results in severe extra-territorial effects and increases the severity of the burden on interstate commerce.

³⁵ By operation of law, permits such as those Appellants requested contain a large number of restrictions on operations, Wis. Admin. Code §Hy 30.14(5), incorporating Hy 30.01(3)(e) 1, 3, 4, 5, 8, 9, 10, 11, 12, 17, 20, 22, 23, 24, 25, 26, 27, and 30. Appellants requested waiver of certain of these provisions (Complaint, Exhibit B).

5. Wisconsin exempts many of its economic interests from its regulation.

The summation of these factors makes Wisconsin's ban unconstitutional.

A finding that Wisconsin's ban is in violation of the Constitution will not eliminate state regulation of motor vehicle sizes and weights. It will merely require that the state regulation be for a legitimate local purpose, that it not impose an undue burden on interstate commerce, and that it not discriminate. Most state vehicle regulations can easily meet those requirements.

If those requirements are not applied to state motor vehicle regulations, the result will be the loss to the national economy of the potential of rapid and inexpensive interstate motor transportation and the growth of destructive competitions and economic restrictions among the states. It would be a denial of the very purpose for which the Commerce Clause was drafted:

"The desire of the Forefathers to federalize regulation of foreign and interstate commerce stands in sharp contrast to their jealous preservation of the state's power over its internal affairs. No other federal power was so universally assumed to be necessary, no other state power was so readily relinquished . . . The states were quite content with their several and diverse controls over most matters but, as Madison has indicated, 'want of a general power over Commerce led to an exercise of this power separately, by the States, which not only proved abortive, but engendered rival, conflicting and angry regulations.' 3 Ferrand, Records of the Federal Convention 547." *H. P. Hood & Sons v. DuMond*, 336 U.S. 525, 533-534 (1949).

Equally, it would be a denial of two hundred years of this Court's protection of the national interest in free and unhindered interstate commerce.

"While the Constitution vests in Congress the power to regulate commerce among the states, it does not say what the states may or may not do in the absence of congressional action, nor how to draw the line between what is and what is not commerce among the states. Perhaps even more than by interpretation of its written word, this Court has advanced the solidarity and prosperity of this Nation by the meaning it has given to these great silences of the Constitution." *H. P. Hood & Sons v. DuMond*, 336 U.S. 525, 534-535 (1949).

Respectfully submitted,

Jack R. DeWitt
John H. Lederer
Anthony R. Varda

DeWITT, McANDREWS & PORTER, S.C.
121 South Pinckney Street
Madison, Wisconsin 53703
(608) 255-8891

APPENDIX A

1A

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

STATE OF WISCONSIN)
) SS
PUBLIC SERVICE COMMISSION)

I, Lewis T. Mittness, Executive Secretary of the
Public Service Commission of Wisconsin and legal custodian
of the official records of said Commission, do hereby
certify under my signature and official seal of the Commission
that the pages of Xerox copy of the documents hereto attached
have been compared by me with the original on file in this
Commission and that the same are true copies thereof, and of
the whole of such originals.

Dated at Madison, Wisconsin

August 29, 1977

Executive Secretary

2A

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE BURLINGTON NORTHERN INC.

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS
IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 1975

Acct. No.	Class of Operating Revenue	Amount
101*	Freight - - - - -	\$99,205.00
102	Passenger - - - - -	- - - - -
103	Baggage - - - - -	- - - - -
104	Sleeping Car - - - - -	- - - - -
105	Parlor and Chair Car - - - - -	- - - - -
106	Other Passenger Train - - - - -	- - - - -
109	Milk - - - - -	26,425.00
110	Switching - - - - -	- - - - -
113	Water Transfers - - - - -	- - - - -
132	Hotel and Restaurant - - - - -	(23.99)
133	Station, Train and Boat Privileges - - - - -	- - - - -
135	Storage - Freight - - - - -	(5,539.00)
137	Demurrage - - - - -	- - - - -
138	Communication - - - - -	- - - - -
139	Grain Elevator - - - - -	- - - - -
141	Power - - - - -	2,951.00
142	Rents of Buildings and Other Property - - - - -	(602.00)
143	Miscellaneous - - - - -	120,258.00
151	Joint Facility - Cr. - - - - -	- - - - -
152	Joint Facility - Dr. - - - - -	- - - - -
TOTAL RAILWAY OPERATING REVENUES - - - - -		\$242,675.00
*Revenue from dock coal from Wisconsin ports to Wisconsin points - included in Acct. 101 - - - - -		None
excluded from Acct. 101 - - - - -		None
Revenue from iron ore from Wisconsin points to Wisconsin docks - included in Acct. 101 - - - - -		None
excluded from Acct. 101 - - - - -		None

VERIFICATION

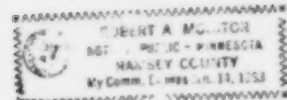
State of MINNESOTA)
County of RAMSEY) SS.

R. P. Garland makes oath and says that he is
Assistant Vice President (Title of Officer) of Burlington Northern Inc.
(Name of Reporting Company), that he has carefully
examined the above statement and that the same is a correct and complete statement
of the gross operating revenues derived from intrastate operations in the State of
Wisconsin for the calendar year 1975.

BURLINGTON NORTHERN INC.

(Signature of Officer) Asst. Vice President

Subscribed and sworn before me, a Notary Public,
in and for State and County above named, this 15th day of March,
1976.
My Commission Expires Jan 14, 1983



(Signature of Officer Authorized to Administer Oaths)

3A

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE CHESAPEAKE AND OHIO RAILWAY COMPANY

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS
IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 1975

Acct. No.	Class of Operating Revenue	Amount
101*	Freight - - - - -	- - - - -
102	Passenger - - - - -	- - - - -
103	Baggage - - - - -	- - - - -
104	Sleeping Car - - - - -	- - - - -
105	Parlor and Chair Car - - - - -	- - - - -
106	Other Passenger Train - - - - -	- - - - -
109	Milk - - - - -	- - - - -
110	Switching - - - - -	- - - - -
113	Water Transfers - - - - -	- - - - -
132	Hotel and Restaurant - - - - -	- - - - -
133	Station, Train and Boat Privileges - - - - -	- - - - -
135	Storage - Freight - - - - -	- - - - -
137	Demurrage - - - - -	- - - - -
138	Communication - - - - -	- - - - -
139	Grain Elevator - - - - -	- - - - -
141	Power - - - - -	1,169
142	Rents of Buildings and Other Property - - - - -	- - - - -
143	Miscellaneous - - - - -	- - - - -
151	Joint Facility - Cr. - - - - -	- - - - -
152	Joint Facility - Dr. - - - - -	- - - - -
TOTAL RAILWAY OPERATING REVENUES - - - - -		1,169
*Revenue from dock coal from Wisconsin ports to Wisconsin points - included in Acct. 101 - - - - -		0
excluded from Acct. 101 - - - - -		0
Revenue from iron ore from Wisconsin points to Wisconsin docks - included in Acct. 101 - - - - -		0
excluded from Acct. 101 - - - - -		0

VERIFICATION

State of _____)
County of _____) SS.

B. G. Lawler makes oath and says that he is
Asst. V.P. & Controller (Title of Officer) of Chesapeake and Ohio System
(Name of Reporting Company), that he has carefully
examined the above statement and that the same is a correct and complete statement
of the gross operating revenues derived from intrastate operations in the State of
Wisconsin for the calendar year 1975.

(Signature of Officer)

Subscribed and sworn before me, a Notary Public,
in and for State and County above named, this 22nd day of February,
1976.
My Commission Expires Feb 14, 1978

(Signature of Officer Authorized to Administer Oaths)

4A

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS
IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 1975

Acct. No.	Class of Operating Revenue	Amount
		\$ 7,235,206
101*	Freight - - - - -	
102	Passenger - - - - -	
103	Baggage - - - - -	
104	Sleeping Car - - - - -	
105	Parlor and Chair Car - - - - -	
108	Other Passenger Train - - - - -	
109	Milk - - - - -	3,511,693
110	Switching - - - - -	
113	Water Transfers - - - - -	
132	Hotel and Restaurant - - - - -	16,361
133	Station, Train and Boat Privileges - - - - -	
135	Storage - Freight - - - - -	1,055,103
137	Demurrage - - - - -	
138	Communication - - - - -	
139	Grain Elevator - - - - -	
141	Power - - - - -	42,367
142	Rents of Buildings and Other Property - - - - -	697,522
143	Miscellaneous - - - - -	32,733
151	Joint Facility - Cr. - - - - -	
152	Joint Facility - Dr. - - - - -	
	TOTAL RAILWAY OPERATING REVENUES - - - - -	12,496,895
	*Revenue from dock coal from Wisconsin ports to Wisconsin points - included in Acct. 101 - - - - -	161,061
	excluded from Acct. 101 - - - - -	
	Revenue from iron ore from Wisconsin points to Wisconsin docks - included in Acct. 101 - - - - -	
	excluded from Acct. 101 - - - - -	

VERIFICATION

RECEIVED

State of ILLINOIS)
County of COOK) SS.

J. M. Butler makes oath and says that he is
Vice President-Finance (Title of Officer) of Chicago and North Western
Transportation Company (Name of Reporting Company), that he has carefully
examined the above statement and that the same is a correct and complete statement
of the gross operating revenues derived from intrastate operations in the State of
Wisconsin for the calendar year 1975.

J. M. Butler
(Signature of Officer)

Subscribed and sworn before me, a Notary Public,
in and for State and County above named, this 2nd day of April,
1976.
My Commission Expires May 21, 1978.

F. J. Brown
(Signature of Officer Authorized to Administer Oaths)

5A

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC R.R. CO.

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS
IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 1975

Acct. No.	Class of Operating Revenue	Amount
		\$2,511,599
101*	Freight - - - - -	
102	Passenger - - - - -	
103	Baggage - - - - -	
104	Sleeping Car - - - - -	
105	Parlor and Chair Car - - - - -	
108	Other Passenger Train - - - - -	
109	Milk - - - - -	3,146,295
110	Switching - - - - -	
113	Water Transfers - - - - -	
132	Hotel and Restaurant - - - - -	1,377
133	Station, Train and Boat Privileges - - - - -	
135	Storage - Freight - - - - -	1,256,592
137	Demurrage - - - - -	594
138	Communication - - - - -	
139	Grain Elevator - - - - -	
141	Power - - - - -	112,401
142	Rents of Buildings and Other Property - - - - -	27,725
143	Miscellaneous - - - - -	50
151	Joint Facility - Cr. - - - - -	
152	Joint Facility - Dr. - - - - -	
	TOTAL RAILWAY OPERATING REVENUES - - - - -	\$5,092,471
	*Revenue from dock coal from Wisconsin ports to Wisconsin points - included in Acct. 101 - - - - -	\$ 13,931
	excluded from Acct. 101 - - - - -	
	Revenue from iron ore from Wisconsin points to Wisconsin docks - included in Acct. 101 - - - - -	
	excluded from Acct. 101 - - - - -	

VERIFICATION

State of ILLINOIS)
County of COOK) SS.

R. F. Kratochwill makes oath and says that he is
Vice President (Title of Officer) of CHICAGO, MILWAUKEE, ST. PAUL
AND PACIFIC RAILROAD COMPANY (Name of Reporting Company), that he has carefully
examined the above statement and that the same is a correct and complete statement
of the gross operating revenues derived from intrastate operations in the State of
Wisconsin for the calendar year 1975.

R. F. Kratochwill
(Signature of Officer)

Subscribed and sworn before me, a Notary Public,
in and for State and County above named, this 23rd day of March,
1976.
My Commission Expires April 23, 1979.

F. J. Brown
(Signature of Officer Authorized to Administer Oaths)

BEST COPY AVAILABLE

6A

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE Duluth, Missabe & Iron Range Railway Company

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS
IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 19 75

Acct. No.	Class of Operating Revenue	Amount
101*	Freight - - - - -	4,640
102	Passenger - - - - -	
103	Baggage - - - - -	
104	Sleeping Car - - - - -	
105	Parlor and Chair Car - - - - -	
106	Other Passenger Train - - - - -	
109	Milk - - - - -	
110	Switching - - - - -	
113	Water Transfers - - - - -	
132	Hotel and Restaurant - - - - -	
133	Station, Train and Boat Privileges - - - - -	
135	Storage - Freight - - - - -	0
137	Demurrage - - - - -	
138	Communication - - - - -	
139	Grain Elevator - - - - -	
141	Power - - - - -	
142	Rents of Buildings and Other Property - - - - -	
143	Miscellaneous - - - - -	
151	Joint Facility - Cr. - - - - -	
152	Joint Facility - Dr. - - - - -	
TOTAL RAILWAY OPERATING REVENUES - - - - -		4,640
*Revenue from dock coal from Wisconsin ports to Wisconsin points - included in Acct. 101 - - - - -		
excluded from Acct. 101 - - - - -		
Revenue from iron ore from Wisconsin points to Wisconsin docks - included in Acct. 101 - - - - -		
excluded from Acct. 101 - - - - -		

VERIFICATION

State of Minnesota }
County of St. Louis } SS.

E. F. Watton makes oath and says that he is
Assistant Comptroller (Title of Officer) of Duluth, Missabe and Iron Range Railway Company (Name of Reporting Company), that he has carefully examined the above statement and that the same is a correct and complete statement of the gross operating revenues derived from intrastate operations in the State of Wisconsin for the calendar year 19 75.

(Signature of Officer)

Subscribed and sworn before me, a _____ day of _____
in and for State and County above named, this _____ day of _____
19 76.
My Commission Expires _____

(Signature of Officer and or not to Administer Oath)

7A

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE Grand Trunk Western Railroad Company

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS
IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 19 75

Acct. No.	Class of Operating Revenue	Amount
101*	Freight - - - - -	4,891.00
102	Passenger - - - - -	
103	Baggage - - - - -	
104	Sleeping Car - - - - -	
105	Parlor and Chair Car - - - - -	
106	Other Passenger Train - - - - -	
109	Milk - - - - -	301.00
110	Switching - - - - -	
113	Water Transfers - - - - -	
132	Hotel and Restaurant - - - - -	
133	Station, Train and Boat Privileges - - - - -	
135	Storage - Freight - - - - -	
137	Demurrage - - - - -	
138	Communication - - - - -	
139	Grain Elevator - - - - -	
141	Power - - - - -	1,400.00
142	Rents of Buildings and Other Property - - - - -	2,688.00
143	Miscellaneous - - - - -	
151	Joint Facility - Cr. - - - - -	
152	Joint Facility - Dr. - - - - -	
TOTAL RAILWAY OPERATING REVENUES - - - - -		4,891.00
*Revenue from dock coal from Wisconsin ports to Wisconsin points - included in Acct. 101 - - - - -		
excluded from Acct. 101 - - - - -		
Revenue from iron ore from Wisconsin points to Wisconsin docks - included in Acct. 101 - - - - -		
excluded from Acct. 101 - - - - -		

VERIFICATION

State of MICHIGAN }
County of WAYNE } SS.

R. L. Ritchie makes oath and says that he is
Treasurer (Title of Officer) of Grand Trunk Western Railroad Company (Name of Reporting Company), that he has carefully examined the above statement and that the same is a correct and complete statement of the gross operating revenues derived from intrastate operations in the State of Wisconsin for the calendar year 19 75.

(Signature of Officer)

Subscribed and sworn before me, a NOTARY PUBLIC
in and for State and County above named, this _____ day of _____
19 76.
My Commission Expires Dec. 1, 1976

(Signature of Officer and or not to Administer Oath)

BEST COPY AVAILABLE

8A

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE Green Bay and Western Railroad Company

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS
IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 1975

Acct. No.	Class of Operating Revenue	Amount
101*	Freight - - - - -	\$ 432,350.
102	Passenger - - - - -	- - - - -
103	Baggage - - - - -	- - - - -
104	Sleeping Car - - - - -	- - - - -
105	Parlor and Chair Car - - - - -	- - - - -
108	Other Passenger Train - - - - -	- - - - -
109	Milk - - - - -	- - - - -
110	Switching - - - - -	26,939.
113	Water Transfers - - - - -	- - - - -
132	Hotel and Restaurant - - - - -	- - - - -
133	Station, Train and Boat Privileges - - - - -	- - - - -
135	Storage - Freight - - - - -	- - - - -
137	Demurrage - - - - -	95,200.
138	Communication - - - - -	- - - - -
139	Grain Elevator - - - - -	- - - - -
141	Power - - - - -	- - - - -
142	Rents of Buildings and Other Property - - - - -	- - - - -
143	Miscellaneous - - - - -	7,776.
151	Joint Facility - Cr. - - - - -	- - - - -
152	Joint Facility - Dr. - - - - -	367.
TOTAL RAILWAY OPERATING REVENUES - - - - -		562,492.
Revenue from dock coal from Wisconsin ports to Wisconsin points - included in Acct. 101 - - - - -		33,206.
Revenue from iron ore from Wisconsin points to Wisconsin docks - included in Acct. 101 - - - - -		- - - - -
Revenue from iron ore from Wisconsin points to Wisconsin docks - excluded from Acct. 101 - - - - -		- - - - -

VERIFICATION

State of Wisconsin)
County of Brown) SS.

O. Lloyd Olson makes oath and says that he is
General Auditor (Title of Officer) of Green Bay and Western Railroad Co.
(Name of Reporting Company), that he has carefully
examined the above statement and that the same is a correct and complete statement
of the gross operating revenues derived from intrastate operations in the State of
Wisconsin for the calendar year 1975.

[Signature]
(Signature of Officer)

Subscribed and sworn before me, a Notary Public,
in and for State and County above named, this 12th day of February,
1976. Robert L. Cooper
My Commission Expires January 23, 1978
My Commission Expires January 23, 1978

Robert L. Cooper
(Signature of Officer Authorized to Administer Oath)

9A

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE Illinois Central Gulf R.R. Co.

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS
IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 1975
(In Thousands)

Acct. No.	Class of Operating Revenue	Amount
101*	Freight - - - - -	2
102	Passenger - - - - -	- - - - -
103	Baggage - - - - -	- - - - -
104	Sleeping Car - - - - -	- - - - -
105	Parlor and Chair Car - - - - -	- - - - -
108	Other Passenger Train - - - - -	- - - - -
109	Milk - - - - -	- - - - -
110	Switching - - - - -	- - - - -
113	Water Transfers - - - - -	- - - - -
132	Hotel and Restaurant - - - - -	- - - - -
133	Station, Train and Boat Privileges - - - - -	- - - - -
135	Storage - Freight - - - - -	- - - - -
137	Demurrage - - - - -	- - - - -
138	Communication - - - - -	- - - - -
139	Grain Elevator - - - - -	- - - - -
141	Power - - - - -	- - - - -
142	Rents of Buildings and Other Property - - - - -	- - - - -
143	Miscellaneous - - - - -	- - - - -
151	Joint Facility - Cr. - - - - -	- - - - -
152	Joint Facility - Dr. - - - - -	- - - - -
TOTAL RAILWAY OPERATING REVENUES - - - - -		3
Revenue from dock coal from Wisconsin ports to Wisconsin points - included in Acct. 101 - - - - -		-
Revenue from iron ore from Wisconsin points to Wisconsin docks - included in Acct. 101 - - - - -		-
Revenue from iron ore from Wisconsin points to Wisconsin docks - excluded from Acct. 101 - - - - -		-

VERIFICATION

State of Illinois)
County of Cook) SS.

Don R. Montgomery makes oath and says that he is
Controller (Title of Officer) of Illinois Central Gulf
Railroad Company (Name of Reporting Company), that he has carefully
examined the above statement and that the same is a correct and complete statement
of the gross operating revenues derived from intrastate operations in the State of
Wisconsin for the calendar year 1975.

[Signature]
(Signature of Officer)

Subscribed and sworn before me, a Notary Public,
in and for State and County above named, this 12th day of February,
1976.
My Commission Expires January 23, 1978

John E. Lott
(Signature of Officer Authorized to Administer Oath)

10A

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE SOO LINE RAILROAD COMPANY

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 1975

Acct. No.	Class of Operating Revenue	Amount
101*	Freight - - - - -	8,443,273
102	Passenger - - - - -	
103	Baggage - - - - -	
104	Sleeping Car - - - - -	
105	Parlor and Chair Car - - - - -	
108	Other Passenger Train - - - - -	
109	Milk - - - - -	
110	Switching - - - - -	425,635
113	Water Transfers - - - - -	
132	Hotel and Restaurant - - - - -	
133	Station, Train and Boat Privileges - - - - -	24
135	Storage - Freight - - - - -	
137	Demurrage - - - - -	525,205
138	Communication - - - - -	
139	Grain Elevator - - - - -	
141	Power - - - - -	
142	Rents of Buildings and Other Property - - - - -	26,392
143	Miscellaneous - - - - -	56,033
151	Joint Facility - Cr. - - - - -	82,837
152	Joint Facility - Dr. - - - - -	
	TOTAL RAILWAY OPERATING REVENUES - - - - -	9,563,298
	*Revenue from dock coal from Wisconsin ports to Wisconsin points - included in Acct. 101 - - - - -	8,211,626
	excluded from Acct. 101 - - - - -	
	Revenue from iron ore from Wisconsin points to Wisconsin docks - included in Acct. 101 - - - - -	
	excluded from Acct. 101 - - - - -	

VERIFICATION

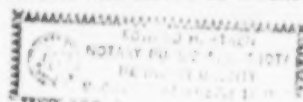
State of Minnesota)
County of Hennepin) SS.

R. L. Murlowski makes oath and says that he is
Vice President - Accounting (Title of Officer) of Soo Line Railroad Company
(Name of Reporting Company), that he has carefully
examined the above statement and that the same is a correct and complete statement
of the gross operating revenues derived from intrastate operations in the State of
Wisconsin for the calendar year 1975.

R. L. Murlowski
(Signature of Officer)

Subscribed and sworn before me, a Notary Public,
in and for State and County above named, this 31st day of March,
1976.
My Commission Expires December 13, 1978.

Edward H. Etkin
(Signature of Officer Authorized to Administer Oaths)



APPENDIX B

Monthly Economic Letter

APRIL 1977

CITIBANK 

Can Carter cure tunnel vision?

The arrival of spring has warmed up the economy and there's good news on most fronts. But there's still a chill in the financial markets, where inflation fears have investors hunkered down.

What's most newsworthy about the economic numbers released in March is not that the economy is snapping back strongly from the temporary dislocations caused earlier by the cold weather. That had been widely forecast. But what wasn't anticipated was the way stock market investors would so thoroughly discount the data to focus instead on widespread fears that the rate of inflation would rise significantly in the longer run.

In this respect, market participants were behaving in a way much akin to businessmen in the late 1960s. Then, forecasts of impending recession were frequently shrugged off with the comment that plans were based on the recovery confidently believed to lie beyond the valley of recession. Today's investors are apparently shrugging off mounting evidence of near-term strength in the real economy and worrying instead about the possible inflationary threat to continued growth in the longer run.

In this context, the job facing the Carter Administration is to shape its upcoming inflation and energy programs and, working with the Federal Reserve, its ongoing fiscal and monetary policies to reduce the threat of higher inflation rates in the future.

There seems to be little doubt that it is this concern that has cooled the ardor of investors. If anything, the economy's recovery from the disruptions associated with cold weather in late January and early February has been more vigorous than expected. Industrial production rose a full 1% in February, more than offsetting the January dip, while housing starts rebounded strongly on a seasonally adjusted basis, nearly regaining a December rate that was the highest of 1976. Retail sales rose a strong 1.8% according to preliminary estimates, making up a lot of the ground lost in January, and personal income also recorded a handsome gain after virtually standing still in January.

Inflation takes some of the luster out of the reported increases in sales and incomes, of course, but the outlook for the spring is bright enough to suggest that incomes and spending will run well ahead of inflation. As revised national income estimates

[PAGES OMITTED]

Summary -- 4

APPENDIX C

Net income of leading nonmanufacturing corporations for 1975 and 1976

(Dollar figures in millions)

No. of cos.	Industry	Reported net income after taxes		Percent change	Net worth beginning of year 1976-a	Percent return on net worth 1975-1976	Percent change in sales-b	Percent margin on sales-c	
		1975	1976					1975	1976
14	Metal mining-d	308.8	383.8	24	2,450.1	13.4	15.7	19	12.9
10	Other mining, quarrying-d	189.8	197.2	4	949.0	24.0	20.8	6	10.2
24	Total mining-d	498.6	581.0	17	3,399.0	16.1	17.1	12	11.6
52	Food chains	293.3	569.2	101	4,571.1	7.0	12.9	9	0.5
85	Variety chains	662.4	866.1	31	5,176.5	14.3	16.7	17	2.7
44	Department & specialty	696.3	839.3	21	5,044.4	13.4	14.4	12	2.0
5	Mail order	541.9	719.7	33	5,447.1	11.1	13.2	10	3.8
163	Wholesale & misc. retail	1,083.4	1,177.7	9	7,427.9	17.1	15.9	11	2.6
349	Total trade	3,277.3	4,192.0	28	28,467.0	13.0	14.7	11	2.0
52	Class I railroads-e,f	107.9	272.5	153	14,841.3	0.7	1.6	13	0.7
51	Common carrier trucking-e	270.1	340.1	26	2,294.3	12.7	14.8	13	3.3
29	Air transport-e	D-52.0	539.9	NM	4,133.8	NM	13.1	14	NM
24	Shipping & other transportation-e	339.6	476.3	26	2,228.0	16.9	19.1	5	4.7
156	Total transportation-e	665.7	1,578.8	137	23,497.4	2.8	6.7	13	1.4
178	Electric power & gas-e	7,331.7	8,442.5	15	71,409.5	11.6	11.8	16	10.0
31	Telephone & communications-e	4,249.0	5,255.0	24	45,112.5	10.0	11.6	14	9.7
209	Total public utilities-e	11,580.7	13,697.5	18	116,522.1	11.0	11.8	15	9.9
31	Amusements	252.2	248.2	2	1,700.5	17.2	14.6	11	7.2
65	Restaurants & hotels	437.1	506.2	16	2,896.9	16.8	17.5	16	4.4
160	Other business services	446.4	705.6	57	4,313.3	11.2	16.4	18	3.8
37	Construction	455.8	569.6	25	2,962.1	17.8	19.2	9	3.8
293	Total services	1,593.5	2,028.6	27	11,872.8	15.0	17.1	14	4.3
2,321	Total nonfinancial	59,349.0	75,844.7	28	541,911.5	11.9	14.0	13	4.5
186	Commercial banks & holding cos.	3,801.7	4,111.8	8	34,959.9	11.8	11.8		
909	Property & liability ins.-g	611.0	2,169.0	255	18,380.0	4.0	11.8		
143	Investment funds-h	1,139.0	1,226.8	8	27,933.5	4.9	4.4		
26	Sales finance	339.4	472.4	24	3,515.5	10.2	12.0		
83	Real estate	D-240.3	33.2	NM	2,749.9	NM	1.2		
21	Miscellaneous finance-i	450.6	590.8	31	3,624.5	12.9	15.4		
1,358	Total financial	8,101.4	8,554.0	40	91,363.0	7.6	9.4		
4,289	Grand total (incl. manufacturing)	\$85,450.3	\$84,448.7	29	\$833,274.5	11.3	13.3		

NM—Not meaningful D—Deficit

(a) Net worth is equivalent to shareholders' equity or "book net assets" or capital and surplus. (b) Less than 1% of nonfinancial firms with 0.1% of the income. (c) First margin is computed for all companies in the report based on revenues. "Sales" include income from investments and other sources as well as from sales. (d) First margin is computed for all companies in the report based on revenues. "Sales" include income from investments and other sources as well as from sales. (e) Due to the large proportion of capital investment in the form of leased debt, the first margin is reported below depreciation charges in some cases. (f) Due to the large proportion of capital investment in the form of leased debt, the first margin is reported below depreciation charges in some cases. (g) Association of American Railroads' publication. (h) Estimated by A. M. Best Co. for all stock companies, based on an adjusted basis for income in most cases excludes capital gains or losses on investments. (i) Includes brokerage firms, savings and loan companies, etc.

BEST COPY AVAILABLE

TEXT OF STATUTES

CHAPTER 29, LAWS OF 1977

* * *

SECTION 1487h. 348.07 (2) (g) of the statutes is created to read:

348.07 (2) (g) 59 feet for a combination of a truck tractor and a semitrailer providing the cargo or cargo space of the semitrailer is 45 feet or less in length and the truck tractor is within the statutory limit in sub. (1).

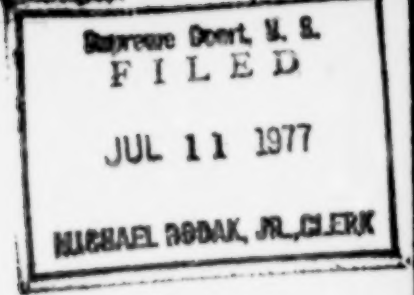
* * *

SECTION 1487s. 348.15 (3) (d) of the statutes is repealed and recreated to read:

348.15 (3) (d) The gross weight imposed on the highway by all axles of a vehicle or combination of vehicles exceeds 73,000 pounds provided that such overall gross weight may exceed 73,000 pounds but not more than 80,000 pounds and between 73,000 and 80,000 pounds, the gross weight shall be determined by application of the following formula: W equals 500 multiplied by $(LN/N-1 \text{ plus } 12N \text{ plus } 36)$ where W equals the overall gross weight on any group of 2 or more consecutive axles to the nearest 500 pounds, L equals the distance in feet between the extreme of any group of 2 or more consecutive axles and N equals the number of axles in group under consideration, except that 2 consecutive sets of tandem axles may carry a gross load of 34,000 pounds each provided the overall distance between the first and last axles of such consecutive sets of tandem axles is 36 feet or more.

SECTION 1487t. 348.20 (3) of the statutes is repealed.

* * *



IN THE
SUPREME COURT OF THE UNITED STATES

1976 TERM

NO. 76-558

RAYMOND MOTOR TRANSPORTATION, INC.,
A Minnesota Corporation,

and

CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE
A Delaware Corporation,

Appellants,

-vs-

ZEL S. RICE, ROBERT T. HUBER, JOSEPH
SWEDA, REBECCA YOUNG, WAYNE VOLK,
LEWIS V. VERSNIK and BRONSON C.
LA FOLLETTE,

Appellees.

BRIEF ON THE MERITS IN
SUPPORT OF APPELLEES
SUBMITTED AMICUS CURIAE
BY THE STATE OF INDIANA

THEODORE L. SENDAK
Attorney General of Indiana

DONALD P. BOGARD
Chief Counsel

Office of the Attorney General
219 State House
Indianapolis, Indiana 46204
Telephone: (317) 633-6249

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LA FOLLETTE

Appellees.

BRIEF OF THE MERITS IN
SUPPORT OF APPELLEES
SUBMITTED AMICUS CURIAE
BY THE STATE OF INDIANA

The State of Indiana, by Theodore
L. Sendak, Attorney General of Indiana,
and Donald P. Bogard, Chief Counsel, pur-
suant to Rule 42 of the Rules of the Supreme
Court of the United States, submits its

amicus curiae brief on the merits in support of the Appellees in the above-entitled cause.

OPINION BELOW

The opinion of the United States District Court for the Western District of Wisconsin (hereafter District Court) has been reported at 417 F. Supp. 1352 (W.D. Wis., 1976) and may be found as Appendix A attached to the Jurisdictional Statement.

JURISDICTION

This Court has jurisdiction to review this cause on appeal pursuant to 28 U.S.C. §1253 and has accepted it for such purpose by noting probable jurisdiction on March 7, 1977.

CONSENT OF THE PARTIES

The amicus curiae brief is filed by the State of Indiana pursuant to Rule 42 of the Rules of this Court and consent of the parties is not required pursuant to Rule 42 (4).

QUESTION PRESENTED

May a State regulate the size of trucks using its highways without violating the Commerce Clause of the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

Article 1, §8 of the Constitution of the United States provides in part:

Powers of Congress.

[3.] To regulate commerce with foreign nations and among the several states , . . .

The Ninth Amendment to the Constitution of the United States provides:

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Fourteenth Amendment to the Constitution of the United States provides, in part:

. . . No state shall . . . deny to any persons within its jurisdiction the equal protection of the laws.

INTEREST OF THE AMICUS

The State of Indiana submits this brief since the issues in this cause are equally vital to Indiana and all other states in the Union. The decision of the District Court on the questions presented is proper and should be affirmed.

This case involves an attempt to challenge the validity of statutes and regulations of the State of Wisconsin which attempt to regulate the size of trucks using the highways within the State. Those statutes and regulations were valid enactments of the people of Wisconsin, and evidence their concern for the well being of all persons using the highways.

Indiana also has statutes dealing with the size of vehicles permitted on its highways. While those statutes differ from the statutes of Wisconsin, Indiana and Wisconsin should,

nevertheless, be entitled to independently determine how to best protect the interests of their citizens.

If the decision of the District Court is overturned, then the next challenge will likely be to the size restrictions enacted by Indiana or some other state. Thus, the rights of the states to protect the interests of their citizens will be eroded and eventually destroyed.

STATEMENT OF THE CASE

The amicus accepts and adopts the "Statement of the Case" contained in appellees' brief on the merits.

ARGUMENT

A STATE MAY GOVERN THE SIZE
OF TRUCKS USING ITS HIGHWAYS
BY STATUTE OR REGULATIONS WITHOUT
VIOLATING THE COMMERCE CLAUSE

In its opinion the District Court concluded:

The Court is of the opinion that, perhaps except under cir-

cumstances more compelling than those of the case at bar, the state of Wisconsin is entitled to choose the maximum length of the commercial vehicles using its highways without judicial re-evaluation of that choice
417 F. Supp. at 1361.

The Appellants ask this Court to overturn that conclusion by asserting that the methods adopted by Wisconsin burden interstate commerce beyond any legitimate local interests and that they discriminate against appellants. Therefore, Appellants assert, there is an unconstitutional violation of the Commerce Clause.

In South Carolina State Highway Department v. Barnwell Brothers, Inc., 303 U.S. 177 (1938) this Court stated at page 184:

While the constitutional grant to Congress of power to regulate interstate commerce has been held to operate of its own force to curtail state power in some measure, it did not forestall all state action affecting interstate commerce.

Ever since Wilson v. Black Bird Creek Marsh Co., 2 Pet. 245, and Cooley v. Board of Port Wardens, 12 How. 299, it has been recognized that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce but which, because of their local character and their number and diversity, may never be fully dealt with by Congress. Notwithstanding the commerce clause, such regulation in the absence of Congressional action has for the most part been left to the states by the decisions of this Court, subject to the other applicable constitutional restraints.

and further stated, at pages 187-188:

But the present case affords no occasion for saying that the bare possession of power by Congress to regulate the interstate traffic forces the states to conform to standards which Congress might, but has not adopted, or curtails their power to take measures to insure the safety and conservation of their highways which may be applied to like traffic moving intrastate. Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. . . .

From the beginning it has been recognized that a state can, if it sees fit, build and maintain its own highways, canals and railroads and that in the absence of Congressional action their re-

gulation is peculiarly within its competence, even though interstate commerce is materially affected. Minnesota Rate Cases, 230 U.S. 352, 416. Congress not acting, state regulation of intrastate carriers has been upheld regardless of its effect upon interstate commerce. Id. With respect to the extent and nature of the local interests to be protected and the unavoidable effect upon interstate and intrastate commerce alike, regulations of the use of the highways are akin to local regulations of rivers, harbors, piers and docks, quarantine regulations, and game laws, which, Congress not acting, have been sustained even though they materially interfere with interstate commerce.

There has been no action by Congress to regulate the length of trucks involved in interstate commerce, a fact acknowledged by the District Court, 417 F. Supp. at page 1359. It is clear that if Congress chose to enter this area of regulation it could have done so in the nearly forty years since the Barnwell case.

Appellants ignore the fact that Congress has not chosen to regulate the length of trucks used in interstate commerce,

and attempt to show that Wisconsin's regulations burden interstate commerce. The principal burden, however, appears to be economic and this Court has held that such an impact is not controlling. Brotherhood of Locomotive Firemen and Enginemen v. Chicago, Rock Island and Pacific Railroad Co., 393 U.S. 129 (1968). The District Court also found economics not to be relevant below. 417 F. Supp. at page 1361.

The Fourteenth Amendment Equal Protection argument advanced by the Appellants is likewise not sufficient for this Court to reverse the District Court. It is well settled in Equal Protection litigation that the primary test is whether there is a reasonable relationship between the objective sought by the classification and the means used to achieve the objective. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920).

The objective being sought in this case is the safety of the people using Wisconsin's highways. Restricting the size of the vehicles using those highways is certainly a reasonable way in which to promote safety, and that there might be additional ways does not invalidate the method chosen.

As the District Court stated, at page 1359:

This Court cannot conclude the prevention of added visual impairment or other similar safety considerations were not within the collective mind of the legislature and administrative bodies responsible for these regulations. Because such factors are indeed legitimate safety concerns, the Court must determine that the proscriptions in question do serve to implement various safety goals.

In addition to all of the above the State of Indiana would direct this Court's attention to the District Court's discussion regarding "judicial efforts to second-guess state highway regulations," 417 F. Supp. at 1361. If Appellants are

successful here, then the next point of attack will probably be to have the 65 foot restrictions declared invalid. After that, perhaps 75 foot, 85 foot or even larger trucks would be rolling over the nation's highways.

The regulations adopted by Wisconsin are not unique. Twelve other states have the same restrictions. 417 F. Supp. at 1361. Thus, this is not a situation like Bibb v. Navajo Freight Lines 359 U.S. 520 (1959) wherein only one state required the particular mud flaps in issue. This is a matter in which the people of Wisconsin have determined that safe regulation of their highways requires imposition of the 55 foot restriction. Indiana would assert that the right to make such a determination is a right granted to all states by the Nineth Amendment to the Constitution of the United States and is in no way prohibited by Article 1, §8 of the Constitution of the United States.

CONCLUSION

For all the foregoing, the Amicus
respectfully prays this Court affirm the
decision of the United States District
Court for the Western District of Wisconsin.

Respectfully submitted,

THEODORE L. SENDAK
Attorney General of Indiana

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219 State House
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NO. 76-558 FILED
JUL 8 1977

IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC., *et al.*,
Appellants,
v.
ZEL S. RICE, *et al.*,
Appellees.

On Appeal from the United States District Court
for the Western District of Wisconsin

**MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*
AND BRIEF OF THE ASSOCIATION OF
AMERICAN RAILROADS AS *AMICUS CURIAE***

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*Attorneys for the Association
of American Railroads.*

IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC., *et al.*,
Appellants,
v.

ZEL S. RICE, *et al.*,
Appellees.

On Appeal from the United States District Court
for the Western District of Wisconsin

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The Association of American Railroads respectfully moves for leave to file the attached brief as *amicus curiae*. The brief supports the decision of the district court, and thus the position of the appellees. Requests for consent by the parties to the filing of the brief were granted by appellees but denied by appellants.

The Association of American Railroads, with headquarters in Washington, D.C., is composed of railroads which operate 96% of the trackage, employ 94% of the workers and produce 97% of the freight revenues of all railroads in the United States. A listing of the full membership of the Association is set forth in an Appendix hereto. The operations of six of those railroads include trackage and other facilities located in Wisconsin. As of December 31, 1975, those railroads' total miles of track in that State was about 5900, and their gross

intrastate operating revenues in Wisconsin in 1975 totalled about \$290 million. In addition, many other railroads participate in the handling of freight shipments that pass through, or originate or terminate in, Wisconsin in moving from point of origin to point of destination.

The Association represents its members in a wide variety of matters that are of interest or concern to many or all of them, including matters that affect competition between the railroad and motor carrier industries. State limitations upon the maximum size and weight of trucks are of concern to the Association and its member railroads not only insofar as they are users of the highways, but because such limitations have a direct effect upon railroad-motor carrier competition. Unlike the motor carriers who operate over highways constructed, owned and maintained by the States, the railroads generally have borne, and now bear, the tremendous costs involved in constructing, owning and maintaining the roadbeds and tracks upon which their trains operate. The resulting competitive advantage of the motor carriers will be magnified, and the ability of the railroads to compete will be further crippled, if appellants' arguments in this case should be adopted by the Court.

As is more fully set forth in the attached brief, appellants not only would have this Court reverse the district court and strike down a Wisconsin limitation upon the length of motor vehicles operating on the highways of that State, but also would have this Court overrule a line of decisions dating back to 1927 which have upheld the right of the States to regulate the size and weight of motor vehicles operating upon their highways, in the absence of discrimination against interstate commerce or supervening Federal legislation. If that should happen so as virtually to free the motor carriers from effective size or weight restrictions, the perilous financial

situation of many of the railroads would be further undermined and the nation's railroad transportation system, as well as the railroads themselves, could be adversely affected. Hence, this case involves matters of substantial importance to the Association and its member railroads.

The purpose of the attached *amicus* brief is to explain the importance of this case to the railroad industry and to set forth our reasons why the decision below should be affirmed. We believe that the arguments which we present in substantial measure will supplement, rather than duplicate, the arguments made by appellees, and that they will be helpful to the Court in disposing of the appeal. For these reasons, we have filed this motion and urge that leave to file the attached *amicus* brief be granted.

Respectfully submitted,

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APPENDIX

FULL MEMBER ROADS

Akron, Canton & Youngstown Railroad Co.
 Alton & Southern Railway Co.
 Atchison, Topeka & Santa Fe Railway Co.
 Los Angeles Junction Railway
 Illinois Northern Railway
 Atlanta & St. Andrews Bay Railway Co.

 Baltimore & Ohio Railroad Co.
 Curtis Bay Railroad Co.
 Staten Island Railroad Corporation
 Baltimore & Ohio Chicago Terminal Railroad Co.
 Bangor & Aroostook Railroad Co.
 Van Buren Bridge Railroad
 Belt Railway Company of Chicago
 Bessemer & Lake Erie Railroad Co.
 Boston & Maine Corporation
 Buffalo Creek Railroad
 Burlington Northern Incorporated
 Oregon Electric Railway
 Oregon Trunk Railway
 Walla Walla Valley Railway

 Cambria & Indiana Railroad Co.
 Canadian Pacific Limited (*Lines in the U.S.*)
 Aroostook Valley Railroad
 Canadian Pacific Lines in Maine
 Canadian Pacific Lines in Vermont
 Chesapeake & Ohio Railway Co.
 Covington & Cinn. Elev. Railroad & Transfer &
 Bridge Co.
 Chicago & Eastern Illinois Railroad
 Chicago Heights Terminal Transfer Co.
 Chicago & Illinois Midland Railway Co.
 Chicago & North Western Transportation Co.

Chicago & Western Indiana Railroad Co.
 Chicago, Milwaukee, St. Paul & Pacific Railroad
 Washington, Idaho & Montana Railway Co.
 Chicago, Rock Island & Pacific Railroad Co.
 Warren & Quachita Valley Railway Co.
 Peoria Terminal Co.
 Clinchfield Railroad Co.
 Colorado & Southern Railway Co.
 Consolidated Rail Corporation (CONRAIL)

 Delaware & Hudson Railway Co.
 Greenwich & Johnsonville Railway Co.
 Denver & Rio Grande Western Railroad Co.
 Detroit & Mackinac Railway Co.
 Detroit & Toledo Shore Line Railroad Co.
 Detroit, Toledo & Ironton Railroad Co.
 Duluth, Missabe & Iron Range Railway Co.

 Elgin, Joliet & Eastern Railway Co.

 Fort Worth & Denver Railway Co.

 Galveston, Houston & Henderson Railroad
 Georgia Railroad
 Grand Trunk Lines (and other lines in the U.S. controlled or subject to control by the Canadian National Railways)
 Grand Trunk
 Central Vermont Railway, Inc.
 Duluth, Winnipeg & Pacific Railway

 Canadian National Railways
 Lines in Michigan
 Lines in New England
 Lines in New York
 Lines in Vermont
 Minnesota & Manitoba Railroad (Leased Line)
 Green Bay & Western Railroad Co.

Houston Belt & Terminal Railway Co.
 Illinois Central Gulf Railroad
 Chicago & Illinois Western Railroad Co.
 Waterloo Railroad
 Kansas City Southern Railway Co.
 Arkansas & Western Railway Co.
 Fort Smith & Van Buren Railway Co.
 Kansas & Missouri Railway & Terminal Co.
 Kentucky & Indiana Terminal Railroad
 Lake Superior & Ishpeming Railroad
 Louisiana & Arkansas Railway Co.
 Louisville & Nashville Railroad Co.
 Carrollton Railroad Co.
 McCloud River Railroad Co.
 Maine Central Railroad Co.
 Portland Terminal Co.
 Manufacturers Railway Co.
 Minneapolis, Northfield & Southern Railway Co.
 Missouri-Kansas-Texas Railroad Co.
 Inc. Beaver, Meade & Englewood Railroad Co.
 Missouri Pacific Railroad Co.
 Doniphan, Kensett & Searcy Railway Co.
 New Orleans & Lower Coast Railroad Co.
 Brownville & Matamoras Bridge Terminal Co.
 St. Joseph Belt Railway
 Missouri-Illinois Railroad Co.
 Norfolk & Western Railway Co.
 Chesapeake Western Railway Co.
 Lorain & West Virginia Railway Co.
 New Jersey, Indiana & Illinois Railroad Co.
 Norfolk, Franklin & Danville Railway Co.
 Lake Erie & Ft. Wayne Railroad Co.
 Pittsburgh & Lake Erie Railroad Co.
 Peoria & Pekin Union Railway Co.

Pittsburg & Shawmut Railroad Co.
 Prescott & Northwestern Railroad Co.
 Raritan River Railroad Co.
 Richmond, Fredericksburg & Potomac Railroad Co.
 St. Louis-San Francisco Railway Co.
 Quanah, Acme & Pacific Railway Co.
 St. Louis Southwestern Railway
 Seaboard Coast Line Railroad Co.
 Columbia, Newberry & Laurens Railroad Co.
 Gainesville Midland Railroad Co.
 Soo Line Railroad Co.
 Sault Ste. Bridge Co.
 Southern Pacific Transportation Co.
 Holton Interurban Railway Co.
 Northwestern Pacific Railroad Co.
 Petaluma & Santa Rosa Railroad Co.
 San Diego & Arizona Eastern Railway Co.
 Visalia Electric Railroad Co.
 Southern Railway Co.
 Alabama Great Southern Railroad Co.
 Louisiana & Southern Railway Co.
 New Orleans Terminal Co.
 Atlantic & Eastern Carolina Railway Co.
 Camp Le Jeune Railroad Co.
 Central of Georgia Railroad Co.
 Cin., New Orleans & Texas Pacific Railway Co.
 Georgia Northern Railway Co. (The)
 Georgia Southern & Florida Railway Co.
 Live Oak Perry & South Georgia Railroad
 State University Railroad Co.
 Interstate Railroad Co.
 St. Johns River Terminal Co.
 Tennessee, Alabama & Georgia Railway Co.
 Tennessee Railway Co.
 Norfolk Southern Railway

Texas & Pacific Railway Co.
 Abilene & Southern Railway Co.
 Texas-New Mexico Railway Co.
 Weatherford, Mineral Wells & Northwestern
 Railway
 Texas Mexican Railway Co.
 Union Railroad (Pittsburgh)
 Union Pacific Railroad
 Spokane International Railroad Co.
 Mt. Hood Railway Co.
 Vermont Railway, Inc.
 Western Maryland Railway Co.
 Western Pacific Railroad Co.
 Sacramento Northern Railway
 Tidewater Southern Railway
 Western Railway of Alabama
 Atlanta & West Point Railroad Co.
 Winston-Salem Southbound Railway

ASSOCIATE MEMBERS

Alaska Railroad (ALASKA)
 Aliquippa & Southern Railroad Co.
 American Refrigerator Transit Co.
 Apalachicola Northern Railroad Co.
 Belfast & Mooseheld Lake Railroad Co.
 Birmingham Southern Railroad Co.
 Brooklyn Eastern District Terminal Railroad
 California Western Railroad
 Chestnut Ridge Railway Co.
 Chicago Short Line Railway Co.
 Chicago South Shore & South Bend Railroad
 Chicago, West Pullman & Southern Railroad Co.
 Cities Service Co. Railroad

Colorado & Wyoming Railway Co.
 Cuyahoga Valley Railway Co.
 Dardanelle & Russeville Railroad
 Delray Connecting Railroad Co.
 Duluth & Northeastern Railroad Co.
 Durham & Southern Railway Co.
 East Erie Commercial Railroad
 East Jersey Railroad & Terminal Co.
 Fruit Growers Express Co.
 Genesee & Wyoming Railroad Co.
 Grafton & Upton Railroad Co.
 Graysonia, Nashville & Ashdown Railroad Co.
 Great Western Railway Co.
 Hartford & Slocomb Railroad—SSI Rail Corp.
 Hillsdale County Railroad Co. Inc.
 Johnstown & Stoney Creek Railroad Co.
 La Salle & Bureau County Railroad Co.
 Lake Terminal Railroad Co.
 Louisiana & North West Railroad Co.
 McKeesport Connecting Railroad Co.
 Manufacturers' Junction Railway Co.
 Minnesota, Dakota & Western Railway Co.
 Monogahela Connecting Railroad Co.
 New Orleans Public Belt Railroad
 New Orleans Union Passenger Terminal
 New York City Transit Authority
 Newburgh & South Shore Railway Co.
 Northhampton & Bath Railroad Co.
 Pacific Fruit Express Co.
 Pearl River Valley Railroad Co.
 Port Authority of New York & New Jersey (The)
 River Terminal Railway Co.
 Roscoe, Snyder & Pacific Railway Co.

Sierra Railroad Co. (California)
 Southern Indiana Railway, Inc.
 Texas & Northern Railway Co.
 Upper Merion & Plymouth Railroad Co.
 *United States Railway Association
 Washington Terminal Co.
 Youngstown & Northern Railroad Co.

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* U.S.R.A.—a body created to develop plans for Consolidated Rail Reorganization Act of 1973.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC., *et al.*,
Appellants,

v.

ZEL S. RICE, *et al.*,
Appellees.

On Appeal from the United States District Court
for the Western District of Wisconsin

BRIEF OF THE ASSOCIATION OF AMERICAN
RAILROADS AS *AMICUS CURIAE*

The Association of American Railroads as *amicus curiae* submits this brief in support of the decision by the District Court in *Raymond Motor Transp., Inc. v. Rice*, 417 F. Supp. 1352 (1976).

STATEMENT OF THE CASE AND OF THE INTEREST
OF *AMICUS CURIAE*

The construction and maintenance of highways in this country is, and traditionally has been, primarily a func-

tion of the individual States, although since 1916 the Federal Government has financially aided the States in the construction of certain interstate highways.¹ So, too, it is the State that regulates the size and weight of motor vehicles permitted to use its highways, including interstate highways. Thus, like all other States, Wisconsin has enacted statutes regulating such matters as the maximum weight, width and length of motor vehicles operating on its highways. This litigation, of course, primarily is concerned with the validity, under the Federal Constitution, of Wisconsin's limitation on the maximum length of motor vehicles as applied to a trailer-train combination of a tractor and two trailers, referred to by appellants as twin trailers.

Wisconsin imposes, by statute, a general limitation prohibiting the operation upon its highways of "any single vehicle with an over-all length in excess of 35 feet or any combination of 2 vehicles with an over-all length in excess of 55 feet," except for "a combination of mobile home and towing vehicle" (which may have an overall length of 60 feet), "implements of husbandry temporarily operated upon a highway," and "[t]our trains consisting of 4 vehicles including the propelling motor vehicle" Wis. Stat. § 348.07. The operation of a vehicle or transportation of an article exceeding "the maximum limitations on size, weight or projection of load" without a permit is prohibited, Wis. Stat. § 348.25 (1), but such permits "exempt from the restrictions and limitations imposed by" statute "to the extent stated in the permit." Wis. Stat. § 348.25 (2).

Insofar as statutory restrictions on length are concerned, exemption by permit is statutorily authorized in regard to "oversize mobile homes" (Wis. Stat. § 348.26 (4)), "to industries and to their agent motor carriers

¹ Act of July 11, 1916, 39 Stat. 355. See 23 U.S.C. §§ 101 *et seq.* for the current Federal aid legislation.

owning and operating oversize vehicles in connection with interplant, and from plant to state line, operations in this state" (Wis. Stat. § 348.27 (4)), "to pipeline companies or operators or public service companies for the transportation of poles, pipe, girders and similar materials" (Wis. Stat. § 348.27 (5)), "to companies and individuals hauling peeled or unpeeled pole-length forest products used in its business" (up to 65 feet) (*ibid.*), "to auto carriers operating 'haulaways' specially constructed to transport motor vehicles" (*ibid.*), "to the operation of [trailer] trains . . . which do not exceed a total length of 100 feet" (Wis. Stat. § 348.27 (6); see, also, § 348.26 (3)), "to licensed motor home transport companies . . . [,] manufacturers and dealers" for the transportation of "oversize mobile homes . . . in the ordinary course of their business" (Wis. Stat. § 348.27 (7)), and to "a vehicle combination of truck and full trailer of loads of pole length and pulpwood . . . for a distance not to exceed 3 miles from the Michigan-Wisconsin state line" (Wis. Stat. § 348.26 (9)).

The Wisconsin Highway Commission, which issues such permits, prescribes the necessary "forms for applications" and "may impose such reasonable conditions . . . and adopt such reasonable rules for the operation of a permittee thereunder as it deems necessary for the safety of travel and protection of the highways." Wis. Stat. § 348.25 (3). And, in general, such "permits shall be issued only for the transporting of a single article or vehicle which exceeds statutory size, weight or load limitations and which cannot reasonably be divided or reduced to comply with statutory size, weight or load limitations" Wis. Stat. § 348.25 (4). This has been construed by the Highway Commission to authorize the issuance of a permit where division of the load would be economically, as well as physically, infeasible (A. 194-195, 199-200, 210-212, 243, 260-261). But each "permit specifies the maximum size and weight of the combina-

tion of vehicle and load which may be operated under the permit," and the "limitations on size are determined by considerations for the safety and reasonable mobility of other traffic using the highway as well as the special requirements for the object to be transported or the industry involved in the transportation" (A. 265).

The Wisconsin Highway Commission has provided by regulation that: "Trailer-train permits shall be issued only for the operation of vehicles used for the transporting of municipal refuse or waste, or for the interstate or intrastate operation without load of vehicles in transit from manufacturer or dealer to purchaser or dealer, or for the purpose of repair." § Hwy 30.14(3) (a). One of the "major factors" in that limitation is what the Commission deemed to be "legislative direction" (A. 250), apparently in rejecting numerous bills mandating increased maximum lengths for such vehicles (see A. 27). Hence, apart from the two exceptions made in that regulation, trailer trains or twin-trailer combinations having an overall length in excess of 55 feet are not permitted to operate on Wisconsin's highways. Accordingly, applications by appellants for permits to utilize twin-trailer combinations 65 feet in length for the transportation of general commodities across Wisconsin on two Interstate highways were denied (A. 14-15).

Appellants have neither contended nor shown that it is either physically or economically infeasible for them to divide their freight traffic so as to transport it over Wisconsin's highways in motor vehicles having an overall length of 55 feet or less. Rather, the bulk of the freight which they transport is composed of small lots weighing less than 10,000 pounds (A. 314-321, 361-364); and both appellants continue to operate in Wisconsin, using single rather than twin trailers or semi-trailer combinations of 55 feet or less (A. 307-308, 372). Indeed, while appellant

Consolidated introduced evidence that such methods of operation increased its costs by about \$2 million annually (A. 289-290), its evidence also disclosed that it had a lower operating ratio (92.4) than the motor carrier industry as a whole (94.5) in 1970-74 (A. 304).

Various witnesses expressed opinions that 65-foot twin-trailer combinations are as safe as, or safer than, 55-foot semi-trailer combinations (A. 52-53, 56-57, 64-65, 70-71, 99, 141, 143, 157, 161-162, 169), but there was no evidence that they are as safe as 55-foot twin-trailer combinations. Moreover, there was evidence that the additional 10 feet in length increases the time required for a motorist to pass the 65-foot vehicles, as compared to 55-foot vehicles, up to a second or two (A. 61-62, 72, 93-94, 116, 144). If a passing car is traveling 10 mph faster, the passing time is increased by 0.68 second (A. 144), which increases the distance traveled while passing by more than 58 feet (A. 62). In wet weather, a passing automobile's windshield is exposed to splash and spray for that much longer in time and distance even though the density may be lighter (A. 101-102, 115-116). In addition, there was evidence that the greater the size of the larger vehicle involved in an accident, the higher the incidence of death among occupants of the smaller vehicle (A. 150-151). The average weight of the loads transported by appellants in twin trailers is substantially greater than that transported in semi-trailers (A. 323, 373). Increased weight increases the time and distance required to brake to a stop (A. 125-126), and weight is a significant factor in the severity of accidents (A. 144-145).

According to a map stipulated to by the parties (A. 277-278), as of November 1975 thirteen States (including Wisconsin) and the District of Columbia did not permit the operation of twin-trailer combinations on their

highways,² four others limited the length of such vehicles to 60 feet or less, three others permitted 65-foot twin-trailer combinations only on turnpikes, and the remainder permitted such vehicles with an overall length of 65 feet or more either generally or on designated highways which included Interstate highways. At least some of those who permit 65-footers have done so only in very recent years (A. 63, 78-79, 167, 169).

In a unanimous *per curiam* opinion, a three-judge District Court upheld the constitutionality of Wisconsin's restrictions on the length of twin-trailer combinations. J. S. App. 1a-23a. Wisconsin's "statutory and administrative scheme" (*id.*, 8a) neither explicitly nor implicitly discriminates against interstate commerce (*id.*, 7a-10a) and "the highways of the state of Wisconsin are controlled without regard to the interstate or intrastate nature of the commerce" (*id.*, 9a). Nor does any burden on interstate commerce outweigh the local benefits or interests served by the length limitation (*id.*, 10a-18a).

Under decisions of this Court, State statutes and regulations related to highway safety carry a strong presumption of validity (*id.*, 12a), and appellants did not overcome that burden or show that Wisconsin's 55-foot length limitation has "no permissible safety goal" (*id.*, 13a). For example, the greater time and distance required to pass the longer vehicles which appellants sought to operate subjects drivers of passing vehicles "to additional visual impairment" which "might be extreme under adverse weather or traffic conditions" (*id.*, 14a). Thus, after a "thorough review of the position of each party and the voluminous record," the lower court "must and does find that the total effect of the restrictions im-

² This obviously includes States, such as Wisconsin, that permit the operation of twin-trailer combinations having an overall length of 55 feet or less.

posed by § Hwy 30.14(3)(a) are neither slight nor problematical as concerns highway safety" (*id.*, 15a).

The lower court also held that Wisconsin's statutory and administrative scheme did not violate the equal protection clause of the Fourteenth Amendment (*id.*, at 18a-21a)—a holding which has not been questioned by appellants in their jurisdictional statement (see p. 4) or brief (see pp. 3-4).

As is shown in its motion for leave to file, the Association of American Railroads is an unincorporated trade association whose membership includes almost all of the nation's Class I railroads. The Association represents its members in a large variety of matters that are of interest or concern to many or all of them, including matters that affect competition between railroads and trucks. Several railroads operate in Wisconsin, and many others may participate in movements of freight that transit that State in moving from point of origin to point of destination. Moreover, appellants in effect are requesting this Court to overrule its many prior decisions establishing the primary right of the individual States to regulate the maximum size and weight of motor vehicles operating on their highways, and to interpret the Constitution as authorizing the courts to establish uniform federal maxima in regard to interstate highways, limited only if at all by the highest maximum established by any State. As the lower court noted (J.S. App. 17a), some States already allow 75-foot motor vehicles, and much the same case could be made for holding that ~~other~~ States must allow such vehicles as that Wisconsin must allow 65-foot vehicles. Even if not these appellants, there inevitably will be many trucking companies that operate interstate in both the State with the highest maximum (unless Alaska or Hawaii) and another State or States.

Many of the officers and employees of the Association and of its member railroads travel on interstate high-

ways in the course of their employment, and no doubt all of them do in their capacity as citizens, so that the safety and convenience of using such highways is a matter with which they are directly concerned. Moreover, as the record discloses (A. 284-285), allowance of 65-foot twin-trailer combinations would permit the motor carriers to compete more effectively with the railroads, and that also would be true of further increases in maximum allowable length or of increases in other State limitations upon the size or weight of motor vehicles.

This is a matter of particular concern to the Association and its member railroads. Unlike the motor carriers who operate over highways constructed, owned and maintained by the States, the railroads generally have borne, and now bear, the tremendous costs involved in constructing, owning and maintaining the roadbeds and tracks upon which their trains operate. If the right of the States to limit the maximum size and weight of motor vehicles should be crippled, the effect of this unjust discrimination upon the ability of the railroads to compete with motor carriers for freight traffic will be magnified. The perilous financial condition of much of the railroad industry, as is illustrated by the recent bankruptcies of the Penn Central and other eastern railroads, is well known. In 1976, the rate of return of all Class I railroads upon net worth was only 1.8%, as compared to a 14.8% rate of return for the common carrier trucking industry.³ If appellants can succeed in this litigation in their effort to convert the Constitution into a mechanism for forcing the highest weight or size limitations on motor vehicles adopted by any State upon the other States, the effect upon the railroads and railroad transportation could be seriously adverse.

³ Citibank (formerly National City Bank of New York) Monthly Economic Letter, April 1977.

For these reasons, this litigation is very important to the Association of American Railroads and to its member railroads, so that we feel compelled to provide the Court with our views as to why the decision below should be affirmed. This is particularly so since we also believe that those views will be helpful to the Court in reaching its decision in the case.

SUMMARY OF ARGUMENT

The power of the States to regulate the size and weight of motor vehicles operated in interstate commerce over the highways of the particular State was first considered and upheld by this Court in *Morris v. Doby*, 274 U.S. 135 (1927). Although the Court pointed out in that decision that the Congress could withhold that authority from the States by enacting supervening Federal legislation, the Congress had not done so then and it has not done so in the 50 years that have since elapsed. The Congress has been satisfied to leave the regulation of the size and weight of trucks to the States even though it has, since 1916, provided Federal aid to the States for the construction of interstate highways and has, since 1935, regulated many other aspects of motor freight transportation. The only exception is that, in enacting the Federal-Aid Highway Act of 1956, the Congress conditioned Federal aid for the construction of the Interstate Highway System upon a State not allowing maximum weights or widths exceeding a specified ceiling, because of concern that some States were going too far in increasing such maximums. As recently as 1974, in considering amendments to that Act, the Congress rejected proposals to convert the ceilings into mandatory Federal maximums and to establish a Federal standard for the length of trucks, and reiterated its view "that truck lengths should remain, as they have been, a matter for State decision." S. Rept. No. 93-1111, 93d Cong., 2d Sess. (1974), at 10.

Appellants do not contend that Wisconsin's length limitation is contrary to Federal statutory law, but they do contend that Wisconsin has discriminated against interstate commerce in permitting certain exceptions to the general 55-foot limitation. As the court below concluded, however, Wisconsin's statutes and regulations regarding such exceptions or exemptions do not distinguish between interstate and intrastate commerce either in terms or in effect. Similar exceptions were held not to invalidate State regulations in *Sproles v. Binford*, 286 U.S. 374 (1932).

Appellants' principal contention is that Wisconsin's length limitation unreasonably burdens interstate commerce. They virtually concede, however, that their contention is contrary to prior decisions of this Court by urging that those decisions be overruled. Among those decisions is *Sproles v. Binford*, *supra* at 392, which held that a State provision "fixing approximately the same limit of length for individual motor vehicles and for a combination of such vehicles" is not "open to objection." As this Court has recognized, the States build, own and maintain their highways, so that regulation of the use of those highways is peculiarly a matter of State concern. *S. C. Hwy. Dept. v. Barnwell Bros.*, 303 U.S. 177, 187-188 (1938). Limitations upon the sizes and weights of motor vehicles "have an important relation to the safe and convenient use of the highways," *Maurer v. Hamilton*, 309 U.S. 598, 609 (1940), and also may be utilized by a State to further its "vital interest in the appropriate utilization of the railroads which serve its people" by "foster[ing] a fair distribution of traffic to the end that all necessary facilities should be maintained and that the public should not be inconvenienced by inordinate uses of its highways for purposes of gain," *Sproles v. Binford*, *supra* at 394.

Hence, these "safety measures carry a strong presumption of validity," so that "even if there are alternative ways of solving a problem" the courts "do not sit to determine which of them is best suited to achieve a valid state objective." *Bibb v. Navajo Freight Lines*, 359 U.S. 520, 524 (1959). The "adoption of one weight or width regulation, rather than another, is a legislative not a judicial choice," and the "legislative judgment . . . is presumed to be supported by facts known to the legislature unless facts judicially known or proved preclude that possibility." *S. C. Hwy. Dept. v. Barnwell Bros.*, *supra* at 191. Under these established principles, Wisconsin's length limitation plainly does not unreasonably burden interstate commerce. As the court below found, it serves an important safety function, and it is the type of regulation which this Court, in the cases cited above and others, has consistently recognized as being within the power of the States to impose.

Appellants contend that those prior decisions have been overruled *sub silentio* by *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970), particularly insofar as the Court there stated that one of the factors considered in determining whether interstate commerce has been unreasonably burdened is whether the local purpose "could be promoted as well with a lesser impact on interstate activities." However, *Pike* involved a State regulation of a kind which "has been declared to be virtually *per se* illegal," and expressly distinguished "state legislation in the field of safety where the propriety of local regulation has long been recognized." *Id.*, at 143, 145. The holdings in *Barnwell Bros.* and *Bibb* that possible alternative measures will not be considered by the courts, where State regulation of the use of highways is involved, was based upon the strong presumption of validity which is afforded to such safety measures. Moreover, as the court below observed, there is no practical alternative to a length limitation, and the appellants' suggested alterna-

tive amounts in substance to a nullification of any limitations upon length.

Appellants' other reason for overruling the prior decisions of this Court is the purported change in the character and extent of motor freight transportation and of the interstate highway system since 1938 when *Barnwell Bros.* was decided. However, as was found in that case, interstate motor freight transportation and Federally-aided interstate highways also were very extensive in 1938. The view of this Court that regulation of the use of the highways is peculiarly a matter of local concern was not grounded upon any sparsity of interstate transportation or interstate highways, but upon the fact that the highways are built, owned and maintained by the States. The purported change in interstate highways upon which appellants rely is construction of the Interstate Highway System pursuant to the Federal-Aid Highway Act of 1956, but the Congress in enacting that statute made clear that the regulation of the length of trucks and similar matters was to continue to be a matter for the States to decide. And, the increase in the volume of motor freight transportation illustrates that interstate commerce has not been unreasonably burdened by State regulation, rather than that the prior decisions upholding such regulation should be overruled.

Indeed, the motor carriers' share of freight traffic as compared to the railroads' share also has increased substantially since 1938. If the courts should undertake to decide what size and weight limitations should be imposed, consideration of that factor might well dictate that those limitations should be made more restrictive. But, it seems clear that the courts should not undertake that task and should affirm the decision below upon the basis of the prior decisions of this Court.

ARGUMENT

Wisconsin's 55-foot limitation upon the length of twin-trailer combinations and other motor vehicles does not conflict with any Federal law, does not discriminate against interstate commerce and does not unreasonably burden interstate commerce. Its validity is supported by an unbroken line of decisions by this Court, commencing in 1927, and appellants' reasons as to why those decisions should be overruled are insubstantial.

I. Wisconsin's Restrictions upon the Length of Motor Vehicles Do Not Conflict with Federal Law or Discriminate Against Interstate Commerce.

1. *There are no conflicting Federal laws.* In *Morris v. Doby*, 274 U.S. 135 (1927), this Court upheld the constitutionality of an Oregon regulation limiting the maximum weight of motor vehicles to 16,500 pounds, as applied to trucks operating in interstate commerce over the Oregon segment of an interstate highway constructed with Federal financial aid under the Act of July 11, 1916 (39 Stat. 355), as then amended and supplemented by the Congress. In so doing, Chief Justice Taft stated for the Court (*id.*, at 143) that:

"An examination of the acts of Congress discloses no provision, express or implied, by which there is withheld from the State its ordinary police power to conserve the highways in the interest of the public and to prescribe such reasonable regulations for their use as may be wise to prevent injury and damage to them. In the absence of national legislation especially covering the subject of interstate commerce, the State may rightfully prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens. . . . Of course, the State

may not discriminate against interstate commerce.
...

Just as the Congress in those early Federal-aid statutes did not withhold from a State the power to limit the weight and size of motor vehicles operating over its highways, the Congress did not do so when it enacted the Motor Carrier Act of 1935 (49 Stat. 543) to provide for Federal regulation of many other aspects of the transportation of freight by motor vehicles,⁴ as this Court held in *Maurer v. Hamilton*, 309 U.S. 598 (1940). And, appellants do not contend that the Congress has withheld that power from the individual States in any other statute, as when it enacted the Federal-Aid Highway Act of 1956 (70 Stat. 374) increasing Federal aid to the State.⁵

Indeed, when it enacted the 1956 Act to aid construction by the States of the present system of Interstate Highways, the Congress expressed its concern "over the increase in weights and dimensions of vehicles operated over the highways of the United States," while "recogniz[ing] that the regulation of weights and dimensions should be handled by the States." S. Rept. No. 350, 84th Cong., 1st Sess. (1955), at 14. Thus, the bill reported by the Senate Committee on Public Works "prohibit[ed] apportionment of funds authorized for the National System of Interstate Highways to any State in which such system may be used by vehicles with any dimension or weight in excess of the greater of (1) the maximum corresponding dimensions or weight permitted by" the existing State law or (2) "recommended" by a 1946 document issued by the American Association of State Highway Officials. *Id.*, at 23; see, also, *id.*, at 14-15.

⁴ The Motor Carrier Act, as amended, is found at 49 U.S.C. §§ 301 *et seq.*

⁵ The Federal-Aid Highway Act, as amended, is found at 23 U.S.C. §§ 101 *et seq.*

While the bill reported by the Senate Committee was passed by the Senate,⁶ generally similar legislation was defeated in the House. See 101 Cong. Rec. 11717-11718 (1955). In the next session of the Congress, the Senate Committee reported a similar bill, including the provision putting a ceiling upon the size and weight maximums which could be allowed by the States in order to be eligible for Federal funding. See S. Rept. No. 1965, 84th Cong., 2d Sess. (1956), at 13-14. The Committee noted, among other things, that the provision was "designed to restrain further increases in weights and dimensions of vehicles using the Interstate System." *Id.*, at 16. By then, the House had passed a generally similar bill which, however, placed a ceiling only upon the maximum per-axle weight that could be allowed by the States. See 102 Cong. Rec. 7221-7222 (1956).⁷

On the floor of the Senate, Senator Kerr submitted an amendment in the form of a substitute for the provision in question, which he noted had been modified from its original form in a "series of discussions with" Senator Gore (the sponsor of and floor leader for the legislation) to add "certain limiting factors" so that "with these modifications he is willing to accept the amendment." *Id.*, at

⁶ See 101 Cong. Rec. 7033 (1955). In the Senate debates, Senator Gore (the sponsor of the bill) stated, among other things, that the "committee did not feel that the Federal Government should seek to invade the jurisdiction of States in the exercise of their police power by entering the field of regulating or enforcing provisions relative to the size and weight of vehicles," but "has for some time been disturbed by continued increases in the weights and dimensions of vehicles operated over highways constructed in part with Federal funds," and concluded that "some action to encourage the States to do a better job in this field is appropriate." *Id.*, at 6717.

⁷ See, also, H. Rept. No. 2022, 84th Cong., 2d Sess. (1956), at 10, which "recognizes that maximum weight limitations for vehicles using the highways are fundamentally a problem of State regulation," but considered some restriction on the maximum weight that a State could allow to be desirable.

9220-9221. The modified Kerr amendment went further than the House bill in placing ceilings upon maximum allowable overall weight and width, as well as upon maximum allowable weight per axle, but eliminated the ceilings upon maximum length and height contained in the provision reported by the Senate Committee.

In regard to elimination of the ceiling upon maximum allowable length, Senator Kerr explained "that in some of the Western States licenses are issued for the addition of another trailer to a truck, where there are long stretches of open road and little congestion of traffic." *Id.*, at 9221. His amendment would not "interfere with that," but on the other hand: "It is the thought in my mind and in the minds of those who agree that the limitations in this amendment will be adequate, because in those States where circumstances do not permit the longer vehicle, the State regulatory bodies have already established limits on the lengths of vehicles. This amendment does not interfere with that." *Id.*, at 9222. He did not believe that, "if longer trucks are permitted in certain States, there will be a movement in adjoining States to have longer trucks operate in those States," so that "we shall have longer trucks on the highways," because "that situation exists now" in that "neighboring States have different regulations, but they live side by side in peace, without conflict." *Id.*, at 9223.

Senator Gore stated that: "I thought I should yield on the height. I saw no necessity of yielding on the length. However, in order to reach a compromise with the Senator from Oklahoma [Mr. Kerr], realizing that axle placement and limitation would indirectly limit the length, and also believing that there was a total lack of uniformity as among the States, I agreed to that." *Id.*, at 9227. He further explained that: "What [the Kerr amendment] does not involve is the overall length, except indirectly. But when there is a limitation on both the per-axle weight

and overall weight, practically speaking, there is a limitation on the vehicle, unless there is an additional unit drawn behind. I hope that my State will never permit it. I hope no other State which does not now permit it will in the future permit additional units to be drawn behind a tractor." *Id.*, at 9224.

Both Senator Kerr and Senator Gore made clear that, even with respect to maximum weight and width as to which ceilings would be established, the "amendment does not violate the integrity of a State which has limitations more exacting than those provided in the bill" (Senator Kerr), so that if "the State limitations were less, the provision would have no effect within that State" and the "State law would remain in effect" (Senator Gore). *Id.*, at 9223, 9224. The Kerr amendment was adopted by the Senate (*id.*, at 9227), and was included unchanged in the bill reported by the Conference Committee⁸ and enacted by the Congress. Hence, Section 108(j) of the Federal-Aid Highway Act of 1956 withheld Federal aid for the construction of Interstate highways from States in which the maximum allowable weight or width is "in excess of" amounts specified in that statute or "by appropriate State authority in effect on July 1, 1956, whichever is the greater." 70 Stat. 381.

In 1974, the Congress amended that provision (88 Stat. 2283), as codified in 23 U.S.C. § 127, to permit "moderate increases" in the allowable weight maximums. S. Rept. No. 93-1111, 93d Cong., 2d Sess. (1974), at 10.⁹ In rec-

⁸ H. Rept. No. 2436, 84th Cong., 2d Sess. (1956), at 31-32.

⁹ In the floor debates, Senator Bentsen explained that the increase in the allowable maximum weight was so limited in order "to make negligible the chances that trucks would have to be longer," and emphasized that: "In addition, the committee has left untouched the States' absolute power to regulate truck lengths. Truck lengths have never been written into Federal law, and the committee has no intention of changing that policy." 120 Cong. Rec. 30828 (1974).

ommending that legislation, the Senate Committee on Public Works stated that it "strongly believes that the ultimate decision on the weights of trucks is a matter for the States, and it wishes to stress that this legislation is not designed as a recommendation for State action." *Ibid.* "The Committee, in fact, rejected an Administration recommendation that the increases be mandatory on the States, for it is the States which have to determine for themselves—based on the needs of their own economies—the capacities of their road system to accommodate such changes and the costs that may result from the increases." *Ibid.* "Moreover, the Committee considered and rejected recommendations by the Administration and others to write into law for the first time a Federal guideline on the lengths of trucks. *The Committee believes that truck lengths should remain, as they have been, a matter for State decision.*" *Ibid.* (Emphasis added.) A factor in those determinations was "the question of safety," as "[h]eavier and larger trucks are said to overstress bridges, cause buffeting of smaller vehicles, and impose a psychological impact on other drivers." *Ibid.*

In short, while the Congress clearly has the power to enact legislation establishing national standards regarding the weight and size of motor vehicles operating in interstate commerce, and thus to preempt inconsistent State regulations on that subject, it generally has been content to leave that matter to the States in accordance with the constitutional standards which this Court enunciated in *Morris v. DUBY* and in numerous subsequent decisions which we discuss at pp. 23-30 *infra*. The Congress has been concerned about the ever-increasing maximums allowed by some States, and imposed ceilings which were intended to inhibit such increases as to weight and width in the Federal-Aid Highway Act of 1956. While the Congress refrained from placing a ceiling on maximum length, in the belief that combinations in which an

additional trailer is attached might not be harmful "in some of the Western States" where "there are long stretches of open road and little congestion of traffic," it was the hope and expectation of the Congress that other States would not allow such combinations so as to have "longer trucks on the highways." And, the Congress has made clear its belief "that truck lengths should remain, as they have been, a matter for State decision."

Consequently, there is no basis for a contention that Wisconsin's length limitation is inconsistent with or has otherwise been preempted by Federal statutory law. Indeed, appellants do not make such a contention, but they do contend that the creation of the Interstate Highway System pursuant to the Federal-Aid Highway Act of 1956 is a reason why this Court should overrule its decisions upholding the constitutional right of the States to regulate the weight and size of motor vehicles, in the absence of inconsistent Federal statutes. As we show later (pp. 38-42, *infra*), the above demonstration that the Congress did not intend any such consequence when it enacted the 1956 statute is but one of the reasons why that contention by appellants should be rejected.

2. *There is no discrimination against interstate commerce.* Appellants do contend that Wisconsin has discriminated against interstate commerce (Brief, at 14-24), but their contention in that regard is so lacking in substance that it can fairly be characterized as frivolous. Their contention is based upon the fact that Wisconsin has made certain exceptions to its general weight and size limitations, either by statute or pursuant to administrative permits. But the statutes and regulations do not distinguished in that regard between interstate and intrastate commerce and, as the court below concluded, "[i]n practical effect, it seems apparent that the highways of the state of Wisconsin are controlled without regard to

the interstate or intrastate nature of the commerce." J.S. App. 9a.

Appellants do not suggest that the exemptions are limited to intrastate commerce except for the authorization, in Wis. Stat. 348.27(4), of permits "to industries and to their agent motor carriers owning and operating oversize vehicles in connection with interplant, and from plant to state line, operations in this state" See Brief, at 19-21. That statutory provision is not limited on its face to Wisconsin industries or agent motor carriers, and it should not be interpreted in such a manner as to make it unconstitutional if it properly can be construed otherwise. *Sproles v. Binford*, 286 U.S. 374, 392 (1932). And, the stated policy of the Wisconsin Highway Commission is that permits "are issued on the basis of policies established by the statutes and by the Commission without regard to whether the applicant is a resident of Wisconsin or not." A. 264; see J.S. App. 9a n. 8.

If the Wisconsin Highway Department has deviated from that policy in regard to interplant permits, as appellants contend (Brief, at 19-21), either in the one instance to which they refer or generally, the proper remedy would be to invalidate that particular discrimination, not the entirely separate limitation upon permits for trailer trains. In any event, appellants are not "industries" or "their agent motor carriers operating vehicles in connection with interplant, and from plant to state line, operations," and they have not sought or been denied an interplant permit. The "alleged discrimination" is one which, "if it exists, does appellees no harm" and of which they, therefore, have no standing to complain. *Clark v. Paul Gray, Inc.*, 306 U.S. 583, 595-596 (1939). See also, e.g., *Morf v. Bingaman*, 298 U.S. 407, 413 (1936); *Lattavo Bros. v. Hudock*, 119 F. Supp. 587, 591 (W.D. Pa., 1953), aff'd per curiam, 347 U.S. 910 (1954).

Appellants also argue that the exemptions discriminate against interstate commerce because they benefit a substantial portion of Wisconsin's industries (Brief, at 21-24), producing about 32.78% of the total value of Wisconsin manufacturing shipments, while those "industry groups create only 18% of all manufacturing shipments" nationwide (Brief, at 22 n. 30). But all shipments of those Wisconsin industries are not shown or claimed to have been by motor vehicles operating pursuant to overweight or oversize permits, and there is no evidence of any disproportion between Wisconsin industries and out-of-state industries insofar as the issuance of such permits is involved.

In any event, "[p]ermits are issued" by Wisconsin "because there are many types of loads that cannot reasonably be divided and moved within statutory size and weight limitations." A. 270; see p. 3, *supra*. The Texas statute involved in *Sproles v. Binford*, *supra*, similarly authorized the State Highway Department to "grant permits, for ninety days, for the transportation 'of such overweight or oversize or overlength commodities as can not be reasonably dismantled,' or for the operation 'of super-heavy and oversize equipment' for the transportation of such commodities" 286 U.S., at 380. In upholding the statutory and administrative scheme of Texas for restricting the size and weight of motor vehicles, the Court concluded, among other things, that in "the instant case, there is no discrimination against interstate commerce" *Id.*, at 390.¹⁰

¹⁰ Exemptions or other classifications in regard to State weight and size limitations generally have been considered to give rise to questions under the equal protection clause, rather than raising a question as to discrimination against interstate commerce. See, e.g., *Sproles v. Binford*, *supra* at 391-396; *Hicklin v. Coney*, 290 U.S. 169, 173-177 (1933); *Department of Pub. Safety v. Freeman Ready-Mix Co.*, 292 Ala. 380, 295 So.2d 242, 250 (1974), app. dis. for want of substantial federal question, 419 U.S. 891 (1974). "The question

Indeed, appellants stated in their jurisdictional statement (p. 12, n. 12) that they take "no exception to permitted over length uses that are uses of necessity," and complain only insofar as "permits are issued for economic reasons rather than physical necessity." But it is not irrational for Wisconsin to allow for the economic, as well as the physical, infeasibility of complying with its general weight or size limits, and such a policy would not discriminate against interstate commerce even if it should benefit local industries more than out-of-state industries (which has not been shown to be true here). In *Firemen v. Chicago, R.I. & P. R. Co.*, 393 U.S. 129, 140-142 (1968), this Court held that State "full crew" laws did not discriminate against interstate commerce, even though "the effect of the mileage exemptions was to free all of the State's 17 intrastate railroads from the coverage of the Acts, while 10 of the 11 interstate railroads are subject to the 1907 Act, and eight of them are subject to the 1913 Act." *Id.*, at 141. The Court pointed out that "the difference in treatment . . . might have a rational basis," including the fact that "the legislature could also conclude that the smaller railroads would be less able to bear the cost of additional crewmen, even though the total addi-

is whether the classification adopted lacks a rational basis." *Sproles v. Binford*, *supra* at 396. The court below rejected an equal-protection argument by appellants, and they have not contested that ruling in this Court. We note that "contentions that many different kinds of classifications employed constituted invalid discrimination have been almost universally rejected," including "contentions of illegal discrimination with respect to classifications differentiating between different types of vehicles, vehicles used in different types of businesses, freight motor carriers and railroads, trucks and passenger busses, private vehicles and government vehicles, private vehicles and those licensed as common carriers, various combinations of tractors and trailers, conventional hauls and short hauls for special purposes, conventional hauls and hauls between common carrier terminal points, etc." Annotation, *Highways—Weight Limitations*, 75 A.L.R. 2d 376, 389-390 (1961). See, also Kahn, *Federal Limitations upon State Motor Carrier Taxation and Regulation*, 32 Temp. L. Q. 61, 74-75 (1958).

tional cost would of course tend to be smaller in the case of the smaller companies." *Id.*, at 141, 142.

We submit, therefore, that Wisconsin has not discriminated against interstate commerce. Both its general restriction upon the length of motor vehicles, and the exceptions which it has made, are applicable to interstate and intrastate commerce alike, both in terms and in fact.

II. Wisconsin's Restrictions upon the Length of Motor Vehicles Do Not Unreasonably Burden Interstate Commerce.

As it appears to us, the only substantial issue in this case is whether Wisconsin has unreasonably burdened interstate commerce, and that issue is substantial only because appellants have requested this Court to overrule a series of prior decisions which clearly support the decision below in this case. We think it plain, however, that those prior decisions establish sound constitutional law, and that appellants' reasons for urging that they be overruled are inadequate.

1. *The decision below is supported by prior decisions of this Court.* This Court first considered the constitutionality of State restrictions upon the weight or size of motor vehicles in *Morris v. Doby*, 274 U.S. 135 (1927), to which we have already referred on pp. 13-14, *supra*. In unanimously holding that Oregon's weight limitation did not unreasonably burden interstate commerce, this Court stated (*id.*, at 144) that:

"With the increase in number and size of the vehicles used upon a highway, both the danger and the wear and tear grow. To exclude unnecessary vehicles—particularly the large ones commonly used by carriers for hire—promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the ab-

sence of legislation by Congress which deals specifically with the subject. . . .’ [Quoting *Buck v. Kykendall*, 267 U.S. 307, 315 (1925).]

“The mere fact that a truck company may not make a profit unless it can use a truck with load weighing 22,000 or more pounds does not show that a regulation forbidding it is either discriminatory or unreasonable. That it prevents competition with freight traffic on parallel steam railroads may possibly be a circumstance to be considered in determining the reasonableness of such a limitation, though that is doubtful, but it is necessarily outweighed when it appears by decision of competent authority that such weight is injurious to the highway for the use of the general public and unduly increases the cost of maintenance and repair. . . .”

In *Sproles v. Binford*, 286 U.S. 374 (1932), this Court established that the effect upon competition between motor carriers and railroads is a separate reason, in addition to the promotion of “safety upon its highways and the conservation of their use” (*id.*, at 390), for upholding the constitutionality of State restrictions upon the size and weight of motor vehicles. That case involved comprehensive restrictions by Texas upon the length, width, height and weight of motor vehicles, subject to several exceptions or exemptions. Chief Justice Hughes stated (*id.*, at 394-395), for a unanimous Court, that:

“It is said that [an] exception was designed to favor transportation by railroad as against transportation by motor trucks. If this was the motive of the legislature, it does not follow that the classification as made in this case would be invalid. The State has a vital interest in the appropriate utilization of the railroads which serve its people, as well as in the proper maintenance of its highways as safe and convenient facilities. The State provides its highways and pays for their upkeep. Its people make railroad

transportation possible by the payment of transportation charges. It cannot be said that the State is powerless to protect its highways from being subjected to excessive burdens when other means of transportation are available. The use of highways for truck transportation has its manifest convenience, but we perceive no constitutional ground for denying to the State the right to foster a fair distribution of traffic to the end that all necessary facilities should be maintained and that the public should not be inconvenienced by inordinate uses of its highways for purposes of gain. . . . The limitation of the length of vehicles, covered by the exception, to 55 feet, and of the weight of their loads to 14,000 pounds, must be taken to be within the legislative discretion for the same reasons as those which were found to sustain the general limitation of size and weight to which the exception applies.”

See, also, *Stephenson v. Binford*, 287 U.S. 251, 271-274 (1932).

In a holding that is particularly relevant to this case, the Court in *Sproles* also concluded that a provision “fixing approximately the same limit of length for individual motor vehicles and for a combination of such vehicles” is not “open to objection.” 286 U.S., at 392. “If the State saw fit in this way to discourage the use of such trains or combinations on its highways, we know of no constitutional reason why it should not do so.” *Ibid.* See, also, *Morf v. Bingaman*, 298 U.S. 407, 411 (1936), which, in holding that permit fees for automobile caravans (one towing the other) did not unreasonably burden interstate commerce, pointed out that “the length of the caravans,” among other things, “increase the inconvenience and hazard to passing traffic.” Accord, *Clark v. Paul Gray, Inc.*, 306 U.S. 583, 593 (1939).

The validity of State restrictions upon the size and weight of motor vehicles next came before the Court in

S.C. Hwy. Dept. v. Barnwell Bros., 303 U.S. 177 (1938). Among other things, South Carolina limited the width of trucks and semi-trailers to 90 inches and their weight, including load, to 20,000 pounds. The trial court had held that those restrictions unreasonably burdened interstate commerce. It found, among other things, "that interstate carriage by motor trucks has become a national industry; that from 85% to 90% of the motor trucks used in interstate transportation are 96 inches wide and of a gross weight, when loaded, of more than ten tons; that only four states prescribe a gross weight as low as 20,000 pounds; . . . that compliance with the weight and width limitations demanded by the South Carolina Act would seriously impede motor truck traffic passing to and through the state and increase its costs;" and "that it has no reasonable relation to safety of the public using the highways" *Id.*, at 182-183. All other States "permit[ted] a width of 96 inches, which is the standard width of trucks engaged in interstate commerce." *Id.*, at 184.

This Court unanimously reversed and upheld the constitutionality of those size and weight restrictions, in a comprehensive opinion written by Mr. Justice (later Chief Justice) Stone. It must be read in its entirety to be appreciated fully, but of particular note is the Court's conclusion (*id.*, at 187-188) that:

" . . . [T]he present case affords no occasion for saying that the bare possession of power by Congress to regulate the interstate traffic forces the states to conform to standards which Congress might, but has not adopted, or curtails their power to take measures to insure the safety and conservation of their highways which may be applied to like traffic moving intrastate. Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. There are few, local regulation of which is as inseparable from a substantial effect on interstate

commerce. Unlike the railroads, local highways are built, owned and maintained by the state or its municipal subdivisions. The state has a primary and immediate concern in their safe and economical administration. The present regulations, or any others of like purpose, if they are to accomplish their end, must be applied alike to interstate and intrastate traffic both moving in large volume over the highways. The fact that they affect alike shippers in interstate and intrastate commerce in large numbers within as well as without the state is a safeguard against their abuse.

" . . . With respect to the extent and nature of the local interests to be protected and the unavoidable effect upon interstate and intrastate commerce alike, regulations of the use of the highways are akin to local regulation of rivers, harbors, piers and docks, quarantine regulations, and game laws, which, Congress not acting, have been sustained even though they materially interfere with interstate commerce." ¹¹

While the Congress "may, by legislation designed to secure uniformity or in other respects to protect the national interest in the commerce, curtail to some extent the state's regulatory power," that "is a legislative, not a judicial function" *Id.*, at 190. So, too, "in reviewing a state highway regulation where Congress has not acted, a court is not called upon, as are state legislatures, to determine what, in its judgment, is the most suitable restriction to be applied of those that are possible, or to choose that one which in its opinion is best adapted to all the diverse interests affected." *Ibid.* Moreover, since "the adoption of one weight or width regulation, rather than another, is a legislative not a judicial choice, its constitutionality is not to be determined by

¹¹ See also, *e.g.*, *Railway Express v. New York*, 336 U.S. 106, 111 (1949); *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 783 (1945).

weighing in the judicial scales the merits of the legislative choice and rejecting it if the weight of evidence presented in court appears to favor a different standard. . . . Being a legislative judgment it is presumed to be supported by facts known to the legislature unless facts judicially known or proved preclude that possibility." *Id.*, at 191.

Maurer v. Hamilton, 309 U.S. 598 (1940), upheld the constitutionality of a Pennsylvania statute prohibiting any part of a trailer from protruding over the cab of the carrier vehicle or over the head of the driver, which this Court regarded as being "in both a technical and practical sense . . . a regulation of weight and size of the loaded motor vehicle" (*id.*, at 610). The Court, in another unanimous opinion written by former Chief Justice Stone, brushed aside objections based upon the commerce and due process clauses, in view of the explication in *Barnwell Bros.* of the "standards which define the state power to prescribe regulations adapted to promote safety upon its highways and to insure their conservation and convenient use by the public." *Id.*, at 603-604. In the course of holding that the Congress, in enacting the Motor Carrier Act, had not preempted State laws regulating the size and weight of motor vehicles (see p. 14, *supra*), the Court pointed to legislative history of that Act recognizing that "sizes and weights" are "an extremely important matter from the standpoint of public safety and convenience" (*id.*, at 609), and went on to note (*ibid.*) that "[t]his Court has also had occasion to point out that the sizes and weights of automobiles have an important relation to the safe and convenient use of the highways, which are matters of state control."

Bibb v. Navajo Freight Lines, 359 U.S. 520 (1959), involved an Illinois statute requiring the use of a "contour" mudguard on trucks and trailers operated on Il-

linois highways. The statute thus prohibited "the conventional or straight mudflap" which was legal in the other States and required by Arkansas. It thus "rendered the use of the same motor vehicle equipment in both States impossible." *Id.*, at 523. The trial court found that it was "conclusively shown that the contour mud flap possesses no advantages over the conventional or straight mud flap" and that "there is rather convincing testimony that use of the contour flap creates hazards previously unknown to those using the highways." *Id.*, at 525.

While this Court affirmed a holding that the Illinois statute unreasonably burdened interstate commerce, it did not repudiate the principles established in its prior decisions as discussed above. Rather, the opinion by Mr. Justice Douglas regarded the case as being "one of those cases—few in number—where," under those established principles, "local safety measures that are nondiscriminatory place an unconstitutional burden on interstate commerce." *Id.*, at 529. Thus, the Court reiterated that the "power of the State to regulate the use of its highways is broad and pervasive," even though it "may have an impact on interstate commerce" in view of the "peculiarly local nature of this subject of safety" (*id.*, at 523, citing *Barnwell Bros.*, *Maurer* and *Sproles*). The Court affirmed that "[t]hese safety measures carry a strong presumption of validity," so that even if "there are alternative ways of solving a problem, we do not sit to determine which of them is best suited to achieve a valid state objective." *Id.*, at 524.

Despite the findings by the trial court that contour mudguards possessed no safety advantages and may create additional hazards, and as to the cost of complying with the Illinois statute, "we would have to sustain the law under the authority of the *Sproles*, *Barnwell* and *Maurer*" cases, if that were all that were involved. *Id.*,

at 526. The "matter of safety" is "one essentially for the legislative judgment" and the regulations upheld in the prior cases also made the operation of motor vehicles more costly. *Id.*, at 525-526. The *Bibb* case presented a "different issue," however, because of the "conflict" between the Illinois statute and the Arkansas regulation "making it necessary . . . for an interstate carrier to shift its cargo to differently designed vehicles once another state line was reached," and thus interfering with "interline" operations. *Id.*, at 526-527.

In addition to the decisions discussed above, this Court has summarily upheld a number of decisions by lower courts holding that State restrictions upon the size or weight of motor carriers did not unreasonably burden interstate commerce.¹² There cannot be any real question about the correctness of the decision below in this case, if those prior decisions by this Court are not repudiated. Indeed, appellants do not contend otherwise in this Court. Although appellants in the court below "place[d] much reliance upon the decision in" *Bibb* (J.S. App. 16a), they now urge that this Court in *Bibb* "misled" the lower court by confirming, rather than repudiating, the principles established by *Barnwell Bros.* and other prior decisions (Brief, at 45).

We shall demonstrate that appellants have not advanced any substantial reason for overruling this Court's prior decisions, but it hardly can be denied that they

¹² *Department of Pub. Safety v. Freeman Ready-Mix Co.*, 292 Ala. 380, 295 So.2d 242 (1974), app. dis. for want of a substantial federal question, 419 U.S. 891 (1974); *Lattavo Bros. v. Hudock*, 119 F. Supp. 587 (W.D. Pa., 1953), aff'd *per curiam*, 347 U.S. 910 (1954); *Whitney v. Johnson*, 37 F. Supp. 65 (E.D. Ky., 1941), aff'd *per curiam*, 314 U.S. 574 (1941); *Darnell Trucking Co. v. Simpson*, 122 W. Va. 656, 12 S.E.2d 516 (1940), app. dis. for want of a substantial federal question, 313 U.S. 549 (1941); *Philadelphia-Detroit Lines v. Simpson*, 37 F. Supp. 314 (S.D. W. Va., 1940), aff'd *per curiam*, 312 U.S. 655 (1941).

were wise in urging that course rather than attempting to convince this Court that Wisconsin's restriction upon the length of motor vehicles constitutes one of the "few" instances in which "local safety measures that are non-discriminatory place an unconstitutional burden on interstate commerce," to utilize the language of this Court in *Bibb*. See p. 29, *supra*. By so doing, appellants at least achieved plenary review by this Court, rather than the summary disposition that otherwise would have been appropriate.

While appellants contend (Brief, at 34-39) that Wisconsin's restriction of twin-trailer combinations and other motor vehicles to a maximum length of 55 feet does not promote safety, the trial court found that "the total effect of the restrictions imposed" by Wisconsin "are neither slight nor problematical as concerns highway safety" (see pp. 6-7, *supra*). In contrast, the trial courts in *Barnwell Bros.* and *Bibb* found that the restrictions at issue in those cases did not promote safety and, in *Bibb*, that the restriction might well create additional hazards (see pp. 26, 29, *supra*). Indeed, appellants have not even demonstrated that the finding below in this case is clearly erroneous,¹³ much less that the record precludes any "possibility" (see pp. 27-28, *supra*) that length has any relation to safety so as to permit the courts to interfere with the legislative judgment in that regard. The increased hazards and inconvenience to other motorists of an additional 10 or more feet in length of monster trucks is obvious, as well as having support in the record (see p. 5, *supra*). When the additional length resulting from coupling two automobiles together causes a problem in that regard, as this Court has recognized (see p. 25, *supra*), how could it be impossible that coupling two 27-foot trailers behind a tractor for a total length of

¹³ See Rule 52(a) F. R. Civ. P.

65 feet has no relationship to the safety or convenience of other motorists?¹⁴

So, too, Wisconsin's restriction on the length of motor vehicles is not different in nature from the size and weight restrictions that the courts have repeatedly upheld. Unlike Illinois' requirement of a contour mudguard, that restriction does not prohibit the use of equipment which is required by some other State or otherwise prevent motor carriers operating over Wisconsin's highways from interchanging with vehicles that satisfy the requirements of other States. Indeed, appellants do continue to operate in interstate commerce over Wisconsin's highways, by either separating their twin trailers or utilizing semi-trailer combinations for the entire interstate journey, and nothing in Wisconsin's law prevents them from using twin-trailer combinations having an overall length of 55 feet or less. See p. 4, *supra*.

We submit, therefore, that there is no basis for an argument that Wisconsin's restriction on the length of motor vehicles unreasonably burdens interstate commerce, if this Court adheres to its consistent course of decisions since 1927 in regard to State regulation of the size and weight of motor vehicles. And, in fact, appellants have not argued to the contrary in this Court.

¹⁴ Appellants contend (Brief, at 42) that the court below, in recognizing that this "Court has on several occasions equated limitations on vehicle size to public safety," was "relying upon . . . presumptions rather than examining the facts of the particular case" However, the lower court's finding "that the total effects of the restrictions imposed" by Wisconsin "are neither slight nor problematical as concerns highway safety" was, as it stated, based upon a "thorough review of the position of each party and the voluminous record in this proceeding" J.S. App. 15a. That court can hardly be faulted for also noting that its finding is confirmed by observations of this Court. And, of course, that court was fully justified in affording to the Wisconsin regulations the "strong presumption of validity" to which they are entitled by *Bibb* and other decisions of this Court. J.S. App. 12a.

2. *This Court should not overrule its prior decisions.* Appellants expressly urge this Court to overrule its *Barnwell Bros.* decision and to repudiate the principles enunciated and applied in *Bibb* (Brief, at 44-49), but obviously their arguments would require the overruling or repudiation of the entire line of cases dealing with State regulation of the size and weight of motor vehicles, commencing with the 1927 decision in *Morris v. Doby*.¹⁵ The opinions in those cases were written by some of the most distinguished jurists that have served on this Court, including three former Chief Justices (Taft, Hughes and Stone), and a dissent was not registered in any of them (only in *Bibb* was there a separate concurring opinion). Although those decisions recognize that the Congress may enact controlling Federal regulations of the size and weight of motor vehicles operating in interstate commerce, preempting inconsistent State regulations, the Congress has not seen fit to do so. Obviously, this Court should not lightly overrule or repudiate that consistent line of decisions which has been followed and relied upon for some 50 years.

Appellants suggest only two reasons for overruling or repudiating those prior decisions. They urge that those decisions already have been overruled or repudiated, *sub silentio*, by the decision in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970) (see Brief, at 44-45), and that the character of motor carrier transportation and of the highways has changed since *Barnwell Bros.* was decided (see Brief, at 46-47). Neither of those contentions has any substance.

¹⁵ Rather incredibly, appellants also suggest that this Court has repudiated (Brief, at 12-13) or "abandoned" (Brief, at 39) the principles adopted in the landmark decision in *Cooley v. Board of Wardens*, 53 U.S. (12 How.) 299 (1851). This Court, of course, has not perceived any such abandonment. See, e.g., *Hunt v. Washington State Apple Advertising Commission*, — U.S. —, 45 U.S.L.W. 4746, 4751 (1977); *Goldstein v. California*, 412 U.S. 546, 553-554 (1973); *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 625 (1973).

The *Pike* decision invalidated, as an unreasonable burden upon interstate commerce, an Arizona statute requiring "all cantaloupes grown" in Arizona to be "packed . . . in standard containers" in that State, as applied to prohibit the transportation of uncrated cantaloupes grown in Arizona to a nearby California point for packing and processing. *Id.*, at 138. That application of the statute involved, on the one hand, "the State's tenuous interest in having the company's cantaloupes identified as originating in *Arizona*," and, on the other hand, "the requirement that the company build and operate an unneeded \$200,000 packing plant in the State." *Id.*, at 145. But it was the nature of the burden which was determinative of the Court's decision. Thus, the Court stated (*ibid.*) that:

"The nature of that burden is, constitutionally, more significant than its extent. For the Court has viewed with particular suspicion state statutes requiring business operations to be performed in the home State that could more efficiently be performed elsewhere. Even where the State is pursuing a clearly legitimate local interest, this particular burden on commerce has been declared to be virtually *per se* illegal. . . ."

A State's interest in the safety of its highways is not in any way "tenuous." Rather, "[i]t is difficult at best to say that financial losses should be balanced against the loss of lives and limbs of workers and people using the highways," *Firemen v. Chicago, R. I. & P. R. Co.*, 393 U.S. 129, 140 (1968). And, State laws regulating the size and weight of motor vehicles have never been "viewed with particular suspicion" or "declared to be virtually *per se* illegal." Rather, "[t]hese safety measures carry a strong presumption of validity when challenged in court." *Bibb, supra* at 524. Thus, rather than repudiating or overruling its decisions in that regard, the Court in *Pike* carefully pointed out (397 U.S., at 143) that:

"We are not, then, dealing here with 'state legislation in the field of safety where the propriety of local regulation has long been recognized,' or with an Act designed to protect consumers in Arizona from contaminated or unfit goods. . . ."

It seems plain, therefore, that *Pike* easily is distinguishable from *Morris*, *Sproles*, *Maurer*, *Barnwell Bros.*, *Bibb* and similar cases dealing with State regulation of the size or weight of motor vehicles, and does not purport to overrule or repudiate those cases. Appellants (see Brief, at 11) rely, however, upon a generalized statement of principle in *Pike* (397 U.S., at 142) that:

"Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. . . . If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities. . . ."

As we have demonstrated and the court below held, Wisconsin's restriction on the length of motor vehicles regulates "evenhandedly" (see pp. 19-23, *supra*) and "effectuates a legitimate local public interest" (see pp. 23-32, *supra*). The prior decisions by this Court do consider, and indeed stress, the "nature of the local interest involved" (see pp. 23-30, *supra*), and the lower court expressly applied (J.S. App. 10a) the "balancing approach" referred to in *Pike* and inherent in decisions such as *Bibb*. The only portion of the above-quoted formulation in *Pike* which could be said to be inconsistent with the decisions by this Court upon which we rely is the statement that the "burden that will be tolerated" de-

pendes in part upon whether the local purpose "could be promoted as well with a lesser impact on interstate activities." In *Barnwell Bros.*, the Court said that "in reviewing a state highway regulation where Congress has not acted, a court is not called upon, as are state legislatures, to determine what, in its judgment, is the most suitable restriction to be applied of those that are possible, or to choose that one which in its opinion is best adapted to all the diverse interests affected." 303 U.S., at 190. And, in *Bibb* the Court similarly stated that even if "there are alternative ways of solving a problem, we do not sit to determine which of them is best suited to achieve a valid state objective." 359 U.S., at 524. See pp. 27, 29, *supra*.

Of course, it is this seeming inconsistency between general language appearing in *Pike* and the views expressed in *Barnwell Bros.* and *Bibb* upon which appellants primarily rely (Brief, at 44-45) in contending that *Pike* has overruled or repudiated those prior decisions by this Court, and that the court below therefore erred in following those decisions. However, this Court already has rejected a contention that the reference in *Pike* to whether the local interest "could be promoted as well with a lesser impact on interstate commerce" establishes a rigid general rule to be applied in all circumstances in which it is alleged that interstate commerce has been unreasonably burdened. *Hughes v. Alexander Scrap Corp.*, 426 U.S. 794, 804-806 (1976).¹⁶

¹⁶ In *Hunt v. Washington State Apple Advertising Commission*, — U.S. —, 45 U.S.L.W. 4746, 4751 (1977), the Court stated it is "[w]hen discrimination against commerce of the type we have found is demonstrated," that "the burden falls on the State to justify it both in terms of local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives, adequate to preserve the local interests at stake," citing *Pike* as well as other similar decisions. In that case, as in *Pike*, the State statute favored local businesses at the expense of out-of-state businesses. See 45 U.S.L.W., at 4751. In contrast, Wisconsin has not discriminated

Moreover, it is because "[t]hese safety measures carry a strong presumption of validity when challenged in court" that, "[i]f there are alternative ways of solving a problem, we do not sit to determine which of them is best suited to achieve a valid state objective," but leave such "[p]olicy decisions . . . for the state legislature." *Bibb*, *supra* at 524; *Firemen v. Chicago, R. I. & P. R. Co.*, *supra* at 142. As we noted above, this Court in *Pike* made clear that it was not concerned with "state legislation in the field of safety"

Furthermore, as the court below noted, "[a]s a practical matter, no less intrusive alternative to length limitations on commercial vehicles seems possible." J.S. App. 12a n. 10. That comment is illustrated and reinforced by appellants' contention (Brief, at 44-45) that "a less intrusive alternative is available" as they "do not seek a holding that the general limitation of vehicle length is invalid," but only "seek to invalidate that part of the permit system which prevents their permit applications from being considered on an equal basis with other applications." But, of course, if Wisconsin's regulation prohibiting the issuance of trailer-train permits authorizing an overall length in excess of 55 feet is invalidated as to appellants, it could hardly be upheld as to other interstate motor carriers. And, as the lower court pointed out (J.S. App. 17a) the same arguments could be made in regard to permits allowing the 75-foot combinations allowed by some States as appellants have made in regard to the 65-foot combinations that they now desire to operate. In short, appellants' "alternative" amounts in substance to the invalidation of all State limitations upon the length of motor vehicles operating in interstate commerce or on interstate highways, at least insofar as a greater length is allowed by some other State. See p. 7, *supra*.

between intrastate and interstate businesses in limiting the length of motor vehicles.

Appellants' other reason for overruling or repudiating the prior decisions of this Court regarding State regulation of the size and weight of motor vehicles is equally insubstantial. They contend that in 1938, when *Barnwell Bros.* was decided, State regulation "was principally one of local commerce" and interstate motor transportation "was in its infancy," while such interstate transportation since has "increased dramatically" (Brief, at 46).¹⁷ They also say that roads in 1938 were "largely financed by state money" and "served principally as routes for local commerce," while the Interstate Highway System "is designed to provide a national and regional highway system," is "principally funded by federal money," and is constructed in accordance with Federal "standards," citing the Federal-Aid Highway Act of 1956 as codified in 23 U.S.C. §§ 101 *et seq.* (Brief, at 46-47, and n. 42 thereto.)¹⁸ Thus, they argue that "Barnwell's statement that regulation of the use of highways was 'peculiarly a local concern' was doubtful in 1959 [when *Bibb* was decided] and no longer true today as applied to all highways" (Brief, at 47).

Appellants' characterizations very much understate the extent of interstate motor carrier transportation in 1938 and of the highways used for that purpose. For example, such transportation had become so extensive and important by 1935 that the Congress enacted the Motor Carrier Act to regulate federally many aspects of the business, estimating at the time "that over 200,000 separate trucks would be subject to the federal regulation." *Maurer v. Hamilton*, *supra* at 605 n. 4. While increased by the Federal-Aid Highway Act of 1956, Federal financial aid to the States for the construction

¹⁷ Appellants concede that this was also true in "1959, when *Bibb* was decided"

¹⁸ Appellants also concede that the Interstate Highway System was "begun before *Bibb*"

of interstate highways has existed since 1916. See pp. 2, 13, *supra*. This Court in *Barnwell Bros.* did not dispute the findings by the trial court "that there is a large amount of motor truck traffic passing interstate in the southeastern part of the United States, which would normally pass over the highways of South Carolina, but which will be barred from the state by the challenged restrictions if enforced;" that "interstate carriage by motor trucks has become a national industry;" and that South Carolina's restrictions applied to motor vehicles operating over "a connected system of highways which have been improved with the aid of federal money grants, as a part of a national system of highways" (303 U.S., at 182, 183).

In any event, appellants' arguments are completely beside the point. All of the prior decisions by this Court upon which we rely were specially concerned with the application of State size or weight restrictions to interstate motor transportation over interstate highways. There was no contention, or basis for a contention, that those restrictions unreasonably burdened *interstate* commerce insofar as they applied to *intrastate* motor transportation. It was not some lack, or relative sparsity, of interstate motor transportation or interstate highways which led this Court, in *Barnwell Bros.*, to state that "[f]ew subjects of state regulation are so peculiarly of local concern as is the use of state highways." 303 U.S., at 187. Rather, as the Court proceeded to explain (*ibid.*), "[u]nlike the railroads, local highways are built, owned and maintained by the state or its municipal subdivisions," so that the "state has a primary and immediate concern in their safe and economical administration;" and the fact that State regulations "affect alike shippers in interstate and intrastate commerce in large number within as well as without the state is a safeguard against their abuse." See pp. 26-27, *supra*. Those factors have not changed since 1938.

Appellants' reliance upon the development of the Interstate Highway System, with the assistance of Federal funds and in accordance with Federal standards under the Federal-Aid Highway Act of 1956, is both ironic and illustrative of the weakness of their arguments. When that legislation was being considered, spokesmen for the motor-carrier industry urged that "[r]egulation of sizes and weights of trucks should be the function of the States rather than of the Federal Government."¹⁰ And, the Congress was concerned with the possibility that the States would increase the allowable maximums, rather than that they would be too restrictive. Thus, while the Congress made clear its general intent to leave the regulation of sizes and weights to the States, it did condition Federal aid upon State weight and width maximums not exceeding certain ceilings. The Congress did not impose a ceiling on maximum allowable length, but the legislators principally involved in that decision expected and hoped that twin-trailer combinations would not be permitted outside of some Western States "where there are long stretches of open road and little congestion of traffic." See pp. 14-17, *supra*. Indeed, as recently as 1974, in amending the weight ceiling, the Congress continued to "strongly believe that the ultimate decision on the weights of trucks is a matter for the States," rejecting a proposal to change the ceilings into mandatory requirements; and it similarly rejected a proposal to establish "a Federal guideline on the length of trucks" in the belief

¹⁰ Statement of A. B. Gorman, President, Private Truck Council of America, Hearings on Bills Relating to the National Highway Program before a Subcommittee of the Senate Committee on Public Works, 84th Cong., 1st Sess. (1955), at 891; Hearings on H. R. 4260 before the House Committee on Public Works, 84th Cong., 1st Sess. (1955), at 258. See, also, Statement of John V. Lawrence, Managing Director, American Trucking Associations, in the Senate Hearings at 946; Statement of William A. Bresnahan, Assistant General Manager, American Trucking Associations, in the House Hearings at 1111.

"that truck lengths should remain, as they have been, a matter for State decision." See pp. 17-18, *supra*.

We think it plain, therefore, that the Federal-Aid Highway Act of 1956 is a reason why this Court should not overrule its prior decisions rather than a reason why it should do so. So, too, the increase over the years in the volume and extent of interstate motor transportation of freight supports, rather than undermines, this Court's prior decisions. The States have continually regulated the weight and size of motor vehicles while that increase has been occurring. Thus, the increase vividly demonstrates that interstate motor freight transportation has flourished under the principles established by the Court in its prior decisions, rather than having been unreasonably burdened. Since the Congress has not seen fit to supersede the authority of the States to regulate the size and weight of motor vehicles operated in interstate commerce, the courts certainly should not usurp that authority and undertake the difficult task of determining what the size or weight limitations should be.

We note that, if the courts should undertake that task, they necessarily would have to consider the interests of the railroads as well as of the motor carriers. If the courts should oust the States from the role that they heretofore have performed in that regard, then it would be for the courts, rather than the States, to protect the "vital interest in the appropriate utilization of the railroads," and "to foster a fair distribution of traffic to the end that all necessary facilities should be maintained and that the public should not be inconvenienced by inordinate uses of its highways for purposes of gain." *Sproles v. Binford*, *supra* at 394. See pp. 24-25, *supra*.

The interests of the railroads in that regard, and of the public in their preservation and appropriate utilization, would be considerably greater than the interests of

the motor carriers in reducing their costs of operation. For example, of ton miles of intercity freight traffic transported in the United States by railroad and by motor truck, in 1939 86.5% was transported by railroad and 13.5% by motor truck,²⁰ while by 1975 the railroad share had been reduced to 60.8% and the truck share had increased to 39.2%.²¹ This trend has had serious consequences. Not only have several railroads been bankrupted in recent years, but the rate of return on net worth of all Class I railroads in 1976 was only 1.8% while the comparable figure for motor common carriers was 14.8% (see p. 8, *supra*).

Hence, if the Court should utilize this case to enter upon the business of determining the size and weight restrictions upon motor carriers, displacing the States from their previous exercise of that role, it could well determine that the sizes and weights allowed should be decreased rather than increased. We are convinced, however, that the Court will not undertake such policy determinations now, just as it has refused to do so in the past. We believe that it still is true, as this Court stated in *Barnwell Bros.*, that "the adoption of one weight or width regulation, rather than another, is a legislative not a judicial choice" 303 U.S., at 191. See pp. 27-28, *supra*. It is difficult to see how it could be otherwise under our system as the courts are not equipped to make such policy decisions.

²⁰ Interstate Commerce Commission Statement No. 568, file No. 10-D-7, February 1956.

²¹ 1976 Annual Report of the Interstate Commerce Commission.

CONCLUSION

For the reasons stated above, the decision by the district court should be affirmed.

Respectfully submitted,

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In The
Supreme Court of the United States

October Term, 1976

No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC.,
A MINNESOTA CORPORATION
AND
CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE
A DELAWARE CORPORATION

Appellants,

VS.

ZEL S. RICE, ROBERT T. HUBER, JOSEPH SWEDA,
REBECCA YOUNG, WAYNE VOLK, LEWIS V.
VERSNIK, and BRONSON C. LA FOLLETTE,

Appellees.

On Appeal From The United States District Court
For The Western District of Wisconsin

BRIEF OF THE COMMONWEALTH OF VIRGINIA
AS AMICUS CURIAE

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§ 348.05(2)(k)-(l)	31, 32
§ 348.06(1)	30
§ 348.06(2)(a)	30
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In The
Supreme Court of the United States
 October Term, 1976

 No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC.,
 A MINNESOTA CORPORATION

AND

CONSOLIDATED FREIGHTWAYS CORPORATION
 OF DELAWARE
 A DELAWARE CORPORATION

Appellants,

VS.

ZEL S. RICE, ROBERT T. HUBER, JOSEPH SWEDA,
 REBECCA YOUNG, WAYNE VOLK, LEWIS V.
 VERSNIK, and BRONSON C. LA FOLLETTE,

Appellees.

 On Appeal From The United States District Court
 For The Western District of Wisconsin

BRIEF OF THE COMMONWEALTH OF VIRGINIA
 AS AMICUS CURIAE

INTERESTS OF AMICUS CURIAE

The Commonwealth of Virginia is vitally concerned with the maintenance of safety upon its highways. Pursuant to its interest in highway safety and use, the Commonwealth has

promulgated a comprehensive design regulating vehicle sizes, weights, equipment, operation, and operator's qualifications. In view of the peculiarly local nature of the problems involved in State highway administration, the Commonwealth emphasizes the need to maintain traditional judicial deference with respect to the States' highway safety regulations.

In addition, the Commonwealth has promulgated vehicle restrictions similar to the Wisconsin regulations whose validity is contested in this case. Thus, Virginia limits the actual length of any combination of vehicles to 55 feet. § 46.1-330, Code of Virginia (1950), as amended. Furthermore, the Commonwealth limits to two the maximum number of vehicles that may be operated in combination. § 46.1-335, Code of Virginia (1950), as amended. Although several exceptions to these general limitations have been created, the 65 foot twin trailers Appellants claim to have a constitutional right to operate in Wisconsin also have been prohibited in Virginia. An invalidation of the Wisconsin regulation would not only place the validity of the Commonwealth's twin trailer prohibition under suspicion but also would threaten the viability of Virginia's entire comprehensive highway regulatory design. Therefore, the Commonwealth urges the need for a reaffirmation of the principle that the subject of highway regulation is a traditional state function within which the States may validly exercise their police powers.

In accordance with Rule 42, of the Rules of the United States Supreme Court, the instant Brief of the Commonwealth of Virginia, *Amicus Curiae*, is filed within the time allowed for the filing of the brief of the parties supported, Appellees.

QUESTIONS PRESENTED

A. Does Wisconsin's refusal to permit twin trailers on its Interstate Highways constitute a regulation for the purpose of safety?

B. Do State regulations of highways continue to constitute matters of peculiar local concern and, if so, are such regulations entitled to a presumption of validity if they are reasonably related to safety?

C. Does Wisconsin's regulatory scheme discriminate against interstate commerce?

D. Does the fact that Wisconsin has permitted certain exceptions to its limitation on the length of trucks on its interstate highways constitute a denial of equal protection of the laws to those who operate twin trailers on highways of other States?

STATEMENT OF THE CASE

The Commonwealth of Virginia adopts the Appellee's statement of the case.

SUMMARY OF ARGUMENT

It is the position of the Commonwealth that the law of the State of Wisconsin restricting the lengths of vehicles on Wisconsin's highways to 55 feet is promulgated to promote that State's legitimate interest in the safety of motorists on its highways. All precedent dictates that regulation of safety on State highways is a matter of peculiar local concern and well within the authority of the legislatures of the respective States. There is no factual or statistical evidence adduced by the appellants, nor can there be, which will support their apparent request that this particular State interest is no longer of peculiar local concern. Further, the

facts which have been adduced seem to direct the appellants' argument toward an attempt to show that the Wisconsin regulation is discriminatory; if this be the case, no new standard of review need be promulgated inasmuch as a State law which discriminates against interstate commerce is invalid under existing precedent.

Inasmuch as safety on State highways is a matter of peculiar local concern, this Court has previously ruled that the regulations in this regard should be struck down only in the event that they bear no rational relation to that permissible State interest. There is no reason why this should not continue to be the standard in measuring such regulations. The appellants' contention that the decision of this Court in *Pike v. Bruce Church*¹ establishes a test by which burdens on interstate commerce are to be measured, different from that in *South Carolina v. Barnwell*², is erroneous. Appellants read the *Pike* decision to require that the validity of a State regulation affecting interstate commerce be evaluated by the Court on the basis of the preponderance of the evidence; this would require the Court to sit as a legislature and analyze all of the varying policy considerations, even in cases where scientific exactitude is not possible. The Commonwealth believes that appellants misread the *Pike* decision and in support of this submit the decision of this Court in *Brotherhood of Loc. F. & E. v. Chicago R.I. & Pac. R.R.*³ in which the Court clearly established that the rational basis test is the proper one in cases involving conflicts between State regulation of safety and the Commerce Clause. The *Pike* decision involved another category of State interest formulated by

¹ 397 U.S. 137 (1970).

² 303 U.S. 177 (1938).

³ 393 U.S. 129 (1968).

this Court in order to properly determine what standard of review it should be subjected to. In this regard, it represents merely another step in the method of review which has evolved since the decision of this Court in *Cooley v. Board of Wardens*.⁴

It is clear that the precedent of this Court well establishes the rule that local regulation of size and weight of motor vehicles is directly related to safety and no evidence need be adduced on this point. Without regard to this, the record shows quite clearly that the double-bottomed trailers proposed by the appellants can pose significant safety problems in their operation on highways. Among these problems are: extra time in passing, longer stopping distances, added impact upon collision, and adverse psychological effect upon motorists.

Further, the Commonwealth submits that the State of Wisconsin and all other States have the right to establish categories for the classification of various types of vehicles which might be allowed, by special permit, to exceed the length limitations established by their laws. It has been held that such categories need only be reasonable in order to be compatible with the Equal Protection Clause of the Constitution.

In light of the foregoing, it is submitted that it is within the power of the State to regulate for the safety of its citizens and that the regulations in question are not incompatible with the Commerce and Equal Protection Clauses of the Constitution and should accordingly be upheld.

⁴ 53 U.S. (12 How.) 299 (1851).

ARGUMENT

I

**Regulation Of Highways Is A Matter Of Peculiarly Local Concern
Which Is Properly A Function Of The Individual States.**

All States have the inherent authority to legislate in the best interest of the health, safety and welfare of their citizens, *Douglas v. Seacoast Products*,⁵ and this authority is expressly reserved to the States under the Tenth Amendment of the Constitution.⁶ It would seem that, in the absence of an effect on a subject specifically granted to Congress or prohibited to the States, such authority is unlimited. Unfortunately, subjects of exclusive state control are virtually non-existent. Thus, it has become necessary for this Court to formulate axioms and theorems which delineate the boundaries between States' reserved powers and powers granted to Congress when the exercise of each, on their permissible subjects, conflict.⁷

Historically, highways have been constructed, maintained, and regulated by State governments. This fact has been recognized as a legal principle so frequently by this Court as to have become axiomatic. Most prominently it was said:

⁵ 45 U.S.L.W. 4488 (May 23, 1977).

⁶ *U.S. Const. Amend X*.

⁷ It should be noted that this Court recently expressly held that there are some integral State functions such as employer-employee relationships in areas such as fire prevention, police, etc. which, except in emergencies, are beyond affirmative (and, we assume, negative) federal control through the Commerce Clause. *National League of Cities v. Usery*, 426 U.S. 833 (1976). It is not yet clear how a "peculiar local concern" measures against an integral State function on a scale of powers which can withstand Commerce Clause challenges, but, at a minimum, *National League* reemphasizes this Court's belief in federalism and certainly argues against the degradation and devolution of status previously accorded categories of State interest.

Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. There are few, local regulation of which is so inseparable from a substantial effect on interstate commerce. Unlike the railroads, local highways are built, owned, and maintained by the state or its municipal subdivisions. The state has a primary and immediate concern in their safe and economical administration.⁸

The regulation of highways "is akin to quarantine measures, game laws, and like local regulations of rivers, harbors, piers, and docks, with respect to which the state has exceptional scope for the exercise of its regulatory power, and which, Congress not acting, have been sustained even though they materially interfere with interstate commerce."⁹

It is submitted that State control of the systems of highways in this Nation is proper and appropriate, not only in light of the presently prevailing system whereby the States design, construct, own, and maintain almost exclusively all roads in this Nation, but also in view of the fact that each State has peculiar characteristics which militate toward peculiar and unique local laws which take cognizance of those conditions. A whole catalogue of such conditions could be produced, but the most prominent would seem to be local patterns of traffic use, geographical factors, weather conditions, and the wishes and best judgment of the citizens of the domain through which each highway must pass.

It is further submitted that the construction, maintenance, and operation of highways is, as the State functions enum-

⁸ *South Carolina State Highway Department v. Barnwell Bros., Inc.*, 303 U.S. 177, 187 (1938).

⁹ *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 523-24 (1959), quoting *Southern Pacific v. Arizona*, 325 U.S. 761, 783 (1945).

erated above, so closely bound practically, historically, and legally in the operations of State governments as to be a traditional State function mandated by a compelling State interest.

On many occasions this Court has been called upon to assess the nature of the State highway function, and all precedent dictates the essential and compelling State character of highways:

In the absence of national legislation especially covering the subject of interstate commerce, the State may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens.¹⁰

Regulation of vehicular traffic over the highways of the United States involves a far more varied and complex undertaking. The highways of the country have been built by the states with substantial financial aid from the federal government in the construction of some of them. They are state owned, and, in general, are open in each state to use by privately owned and controlled motor vehicles of widely different character as respects weight, size, and equipment. The width, grades, curves, weight-bearing capacity, surfacing and overhead obstructions of the highways differ widely in the forty-eight different states and in different sections of each state. There are like variations with respect to congestion of traffic. State regulation, developed over a period of years, has been directed to the safe and convenient use of the highways and their conservation with reference to varying local needs and conditions.¹¹

Unlike the railroads local highways are built, owned and maintained by the state or its municipal subdivisions. The state is responsible for their safe and eco-

¹⁰ *Morris v. Doby*, 274 U.S. 135, 143 (1927).

¹¹ *Maurer v. Hamilton*, 309 U.S. 598, 604-05 (1940) (footnotes omitted).

nomical administration. Regulations affecting the safety of their use must be applied alike to intrastate and interstate traffic. The fact that they affect alike shippers in interstate and intrastate commerce in great numbers, within as well as without the state, is a safeguard against regulatory abuses.¹²

The power of the State to regulate the use of its highways is broad and pervasive. We have recognized the peculiarly local nature of this subject of safety, and have upheld state statutes applicable alike to interstate and intrastate commerce, despite the fact that they may have an impact on interstate commerce.¹³

That highways are a local and State function exclusively is implicitly recognized by the terms of the Federal Aid-Highway Act, Title 23 U.S.C., which is based, not upon a Federal assertion of control over highways, but upon the principle of grants-in-aid by which the Federal government, through the operation of the general welfare clause of the Constitution, aids the States through expenditure of Federal monies in the performance of the State function. Although, certainly, the expenditure of Federal monies is conditioned upon the performance of certain standards, there is no attempt in any Act of Congress to direct the States to unconditionally perform any act in the construction, maintenance, or operation of its highways. It is submitted that this axiom is the touchstone from which all analysis of State regulation of the length of motor vehicles must commence.

Any challenge to a State's regulation must begin from this basic premise to either ask that this precedent be overruled or find a legally recognized exception. In this regard, it would seem that appellants have adopted an ambivalent

¹² *Southern Pacific v. Arizona*, 325 U.S. 761, 783 (1945).

¹³ *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. at 523 (1959).

and inconsistent approach inasmuch as, on page 44 of their brief, they state that they "do not seek a holding that the general limitation of vehicle length is invalid," but a major portion of their brief is devoted to arguments that the well established status of local highway safety regulation is no longer appropriate. Were the appellants to prove that the Wisconsin regulatory design favors intrastate over interstate traffic, then such design would, under existing precedent, be offensive to the Commerce Clause. In that case there would be no reason to urge the promulgation of a new standard and the Commonwealth of Virginia would have no compelling interest in the outcome of this case. Although the Commonwealth believes that the District Court was correct in finding that Wisconsin's design does not discriminate in favor of intrastate commerce, she would not be concerned were the appellants to challenge that design solely on the basis that it was discriminatory. This, however, does not appear to be the case; despite assertions to the contrary, appellants argue that the *Barnwell* standard and its corollaries are outdated and that the regulation of highways is no longer a traditional State function with the presumptions of validity formerly attendant thereto. In essence, therefore, the appellant's threshold request is that the *Barnwell*, *Southern Pacific*, and *Bibb* decisions of this Court be overruled.

In support of this contention it has been submitted that, in 1977, motor carriers form a National system of commerce¹⁴ and that the *Barnwell* statement of peculiar local concern in highway regulation, having been appropriate in 1938, is no longer appropriate in light of a "fundamental change" which is manifest.¹⁵

¹⁴ Brief for appellants at 26.

¹⁵ Brief for appellants at 46.

As primary evidence of this fundamental change, the advent of the Interstate System of Highways is adduced. The only additional support for this proposition is found in government figures showing ton-mile figures for 1938 as compared to 1974 and certain figures relating to the percentage of certain commodity groupings which were carried by for hire motor carriers in 1972.¹⁶ Neither of these points support a contention of a fundamental alteration of the power and duties of States with respect to highways.

The Interstate Highway System is constructed by the States, with Federal monetary aid, under the provisions of the Federal-Aid Highway Act, Title 23, U.S.C. Each State is entitled to apply for and receive the funds available for this and other systems upon agreement to accept the statutorily established conditions upon the use of such aid. The provisions of this Act are, quite clearly, predicated upon the voluntary nature of a State's participation in its programs. Congress, in promulgating the statutory conditions to the acceptance of Federal aid, is able to, and has, provided for the attainment of standards and a concomitant degree of uniformity among various States which it deems acceptable. This has been accomplished, not by Federal mandate, but by financial inducement and local initiatives. This was as true of the federally funded highways in South Carolina in 1938 as it is today. While it may be true that Federal aid comprises a greater portion of a State's construction budget today than in 1938, and while it may be

¹⁶ The statistics adduced by appellants show a 12-fold increase in ton-mile motor carriage between 1938 and 1974; no attempt is made to compare this to the increase in all forms of transport. In any event, these figures have no relevance to the issues of whether a highway is properly controlled by the State, such issues having been previously decided not on the basis of volume but on the basis of compelling local interest.

true that there has been a commensurate inflation in the number of federal conditions upon the acceptance of such aid, it is submitted that there has been no alteration in the basic Federal-State or State-to-State relationships with respect to highways since 1938. This is true inasmuch as the responsibility for the initiation and implementation of highway programs still lies with each individual State. Appellant has cavalierly postulated to the contrary, but has adduced absolutely no evidence in support.

The Interstate System, as it exists today, is neither constructed, maintained, owned or operated by the Federal Government.¹⁷ Congress has specifically recognized the local characteristics of these highways in 23 U.S.C. § 145 which provides that "[t]he provisions of this chapter [23 U.S.C. § 101-56] provide for a federally assisted *State program*."¹⁸

¹⁷ 23 U.S.C. § 114, 116.

¹⁸ (Emphasis added). A review of the facts in *Morris v. Duby*, 274 U.S. 135 (1927), indicates that, in fact, federal aid provisions in effect in 1921 with respect to rural post roads were the same as those now in effect with respect to Interstate Highways, at least insofar as a State's control of its highways is concerned. In *Morris* the Federal-State relation was outlined:

The Secretary of Agriculture, by virtue of three Acts of Congress, one of July 11, 1916, c. 241, 39 Stat. 355, an amendment thereto of February 28, 1919, c. 69, 40 Stat. 1189, 1200, and the Federal Highway Act of November 9, 1921, c. 119, 42 Stat. 212, is authorized to cooperate with the States, through their respective highway departments, in the construction of rural post roads. These require that no money appropriated under their provisions shall be expended in any State until it shall by its legislature have assented to the provisions of the Acts. They provide that the Secretary of Agriculture and the State highway department of each State shall agree upon the roads to be constructed therein and the character and method of their construction. The construction work in each State is to be done in accordance with its laws, and under the supervision of the state highway department, subject to the inspection and approval of the Secretary and in accord with his rules and regulations made pursuant to the federal acts. The States are required to maintain the roads so constructed according to their laws.

Id. at 140.

It is agreed that the highways of all of the States have dramatically improved since the *Barnwell* decision. A great deal of such improvement results from the creation of the Interstate System; no doubt facility of vehicular travel has shown a commensurate improvement. Appellants seem to imply that this development argues the conclusion that a minority of States now must abide by the judgment of the majority where safety regulations are at issue.

The Commonwealth takes strong issue with this inference. It is the nadir of illogic to assume that because the States have, through individual and cooperative efforts, improved the lot of the travelling public, including motor carriers, by upgrading the highways within their borders, they should be deemed to have lessened their individual interests in the regulation of their own highways. In short, appellants would lessen the State interest as a direct result of State actions intended to achieve the salutary result of freer travel. All highways, including Interstates, continue to be owned and maintained by the States; the citizens of each State have a vital interest in their proper maintenance and control. Accordingly, the Commonwealth respectfully submits that the advent of the Interstate System of Highways and the sketchy statistics shown by the appellants do not support a change in this Court's longstanding approach to the constitutional status of State highways.

To make such a change would cast doubt upon the authority of States to regulate any aspect of highways as well as all other categories of State interest previously established by this Court.

II

Wisconsin's Laws And Regulations Do Not Discriminate Against Interstate Commerce To The Benefit Of Intrastate Commerce.

Appellants have alleged that the Wisconsin law banning twin trailers and limiting semi-trailers to 55 feet in length, with its exceptions, discriminates against interstate commerce to the benefit of intrastate commerce. Ostensibly, this allegation is based upon the fact that the categories of commerce which are given limited exceptions under the law involve commodities and businesses which represent a portion of Wisconsin's economy that is proportionately higher than the rest of the nation.

It is recognized that regulations cannot discriminate against interstate commerce under the guise of safety rules and that all highway laws must apply equally to vehicles in intrastate and interstate commerce.¹⁹ Initially, it is manifest that the Wisconsin regulations apply their exceptions equally to both interstate and intrastate commerce. Appellants, however, adduce statistics which show that six categories of exceptions constitute 32.78% of Wisconsin manufacturing shipments while the same items constitute only 18% of all manufacturing shipments in the nation.²⁰ Thus they allege that these exceptions are tailored to Wisconsin's industry and constitute a "subtle discriminatory pattern."²¹

The Commonwealth agrees with the State of Wisconsin that these exceptions do not discriminate and, therefore, do not offend either the Equal Protection Clause of the Constitution or the Commerce Clause. It is submitted that, although exceptions have been granted, they have been

¹⁹ *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. at 523.

²⁰ Brief for appellants at 22.

²¹ *Id.* at 23.

very carefully circumscribed through limitation of categories and restricting the conditions of use in order to continue the overall effect of safety produced by the 55 foot general standard.

In addition, the Commonwealth believes that the appellants are incorrect in asserting that the differential between the national production figures and the Wisconsin production figures substantiates the claim of discrimination. Initially, the figures submitted are limited at best and do not take into consideration the wide range of commodity figures in different groupings of States surrounding Wisconsin, nor do they consider other factors which might have been relevant to the establishment of exceptions to the 55 foot restriction. Even if the figures do present a correct picture of the relevant commerce factors, it is submitted that an absolute mathematical congruence between the statistics of the Nation and those of Wisconsin is not necessary and, in any event, is irrelevant because competition within the excepted categories is not impaired.

The leading case on discrimination in interstate commerce is the decision of this Court in *Buck v. Kuykendall*.²² In that case the State of Washington had denied a citizen of Oregon a certificate of convenience and necessity to use Washington's highways on the route between Portland and Seattle in his interstate commerce carrier business; Washington officials justified denial on the ground that the territory was adequately served by carriers already authorized. The Court stated:

Its [the statute's] primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition. It determines not the manner of use, but the persons by whom the highways may be used. It prohibits such use to some persons

²² 267 U.S. 307 (1925).

while permitting it to others for the same purpose and in the same manner.²³

The Commonwealth submits that the appellants must meet the standard of showing that the regulation is not reasonably related to safety and that its purpose is to keep interstate traffic off of Wisconsin's highways. The Commonwealth further contends that this showing is impossible inasmuch as the restriction on twin trailers is the subject of this challenge and that restriction is applied to interstate and intrastate commerce evenhandedly. The fact that exceptions are given on the basis of particular commodity categories has no real bearing on the validity of the general restriction, particularly as it relates to appellants. Twin trailers are capable of transporting a wide range of commodities which generally do not affect the excepted commodities; this range is so wide as to make it impossible to say that exclusion of twin trailers reflects a discrimination against any aspect of interstate commerce. It should be pointed out that no goods or commodities are excluded from Wisconsin's highways; only the method of conveying them is somewhat restricted by Wisconsin's legislation in the subject area of one of its most immediate concerns, safety.

III

Non-Discriminatory State Regulation Of Traffic On State Highways Is Constitutionally Permissible So Long As Such Regulation Is Reasonably Related To Highway Safety.

It has been demonstrated in Argument One that the regulation of all State highways continues to enjoy, in a constitutional sense, the status of a maximum State interest and should be entitled, accordingly, to be measured under the

²³ *Id.* at 315.

standards previously applied in such cases. Such measurement is, of course, necessary to determine at what point a State regulation creates such a burden upon interstate commerce as to offend the Commerce Clause.²⁴ In *Barnwell* this Court reiterated that, in the absence of Federal regulation on the subject, the scope of its inquiry stopped after determining "whether the state Legislature in adopting regulations . . . has acted within its province, and whether the means of regulation chosen are reasonably adapted to the end sought."²⁵ The questioned regulations in *Barnwell* were intended to provide for the safety of travelers on South Carolina's highways by imposing certain vehicular width and weight limitations deemed appropriate by the South Carolina Legislature. Previously, the Court had ruled in *Duby*, that the exclusion of unnecessary vehicles, "particularly the large ones commonly used by carriers for hire—promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject."²⁶ Thus, the Court in *Barnwell* was asked to evaluate a State legislative policy decision as to the proper balance between, on one hand, the economic interests of carriers for hire and, on the other, the very sensitive concern for the safety of its citizens and the maintenance of its highways. The factual finding of the trial court, not challenged on appeal, was "that there is a large amount of motortruck traffic passing interstate in the southeastern part of the United States, which would normally pass over the highways of South Carolina, but which will be barred from the state by the challenged

²⁴ U.S. Const. art. 1, § 8, cl. 3.

²⁵ 303 U.S. at 190; *accord*, *Sproles v. Binford*, 286 U.S. 374 (1932); *Stephens v. Binford*, 287 U.S. 251 (1933).

²⁶ 274 U.S. at 144.

restrictions if enforced”²⁷ The Court determined that this, indeed, was a very heavy burden on commerce, both intrastate and interstate, but that the law was reasonably designed to promote the State’s interest in safety on its highways. Although there was an evidentiary showing that the shorter length enhanced safety, the Court was, no doubt, primarily influenced by its earlier holdings that such questions were not susceptible to resolution with scientific precision and that they should be resolved legislatively, where the will of the people most directly effected could be implemented.

Limitations of size and weight are manifestly subjects within the broad range of legislative discretion. To make scientific precision a criterion of constitutional power would be to subject the state to an intolerable supervision hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure. . . . (citations omitted). When the subject lies within the police power of the state, debatable questions as to reasonableness are not for the courts but for the Legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome.²⁸

Decisions as to the necessity of safety provisions to the detriment of cargo capacity are clearly not susceptible to an objective, scientific determination which is clearly correct in the eyes of all affected parties; competing interests will, almost always, disagree, and the resulting legislation will, almost always, compromise those interests. Thus the Court said that unless such compromise was not reasonably related to the state interest, the Court would not disturb it. This is proper since no court is equipped or empowered to enter-

²⁷ 303 U.S. at 182.

²⁸ *Sproles v. Binford*, 286 U.S. at 388-89.

tain, evaluate, and decide questions of policy which such issues inevitably represent.

In all subsequent cases, this Court has expressly reiterated the *Barnwell* deference to State legislative determinations in the field of safety.²⁹ In *Southern Pacific* this Court held that a local regulation of the length of the interstate trains was an impermissible exercise of the local police powers over free flow of commerce. This decision turned on the finding that the regulation of railroads is a category of lesser State interest than the regulation of highways, even as to the subject of safety. Thus, even though the State-imposed burden on commerce in *Southern Pacific* may not have been as great as the State-imposed burden in *Barnwell*, the Court reasoned that the lesser State interest justified a stricter test in evaluating the State regulation. This is not unreasonable. In addition to many manifest distinctions, it is crucial to note that railroads are generally neither constructed nor operated by States. They are not open to the random, independent use of the general citizenry as are highways to motorists; thus, safety factors with respect to trains are easier to evaluate, and there is no random mix of vehicles on rails, other than the regulated trains, which need be protected from the trains. Thus, the Court quite rationally and correctly ruled that the railroads represent an entirely different category of State interest and that safety standards thereon should be subject to a different test when in conflict with the free flow of interstate commerce. Accordingly, the holding in *Southern Pacific* is not inconsistent with *Barnwell* nor with Wisconsin’s position in this case.

In *Bibb v. Navajo Freight Lines, Inc.*,³⁰ this Court invali-

²⁹ See, e.g., *Maurer v. Hamilton*, 309 U.S. 598 (1940); *Southern Pacific v. Arizona*, 325 U.S. 761 (1945); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959).

³⁰ 359 U.S. 520 (1959).

dated a State vehicle regulation on the basis that it impinged too greatly upon the free flow of interstate commerce guaranteed by the Commerce Clause. At the outset, it should be noted that *Bibb* expressly reaffirmed the *Barnwell* doctrine that regulation of highways in the interest of safety is a peculiar and compelling State function and that, even though burdensome, such regulation need only be reasonably adapted to serve that purpose in order to pass constitutional muster.³¹ Since *Bibb* is the only decision of this Court which has declared a highway safety regulation an undue burden on interstate commerce, a review of the pertinent facts is imperative.

The Illinois statute in question had repealed a law which had required trucks and trailers to be equipped with conventional (straight) mudguards and required, instead, that they be equipped with a unique type of contour mudguards. The conventional mudguards continued to be legally required in at least forty-five of the other forty-eight States; the State of Arkansas actually prohibited use of the contour mudguard. The two types of mudguards were not easily interchangeable. Thus, Illinois was effectively requiring that all motor carriers which intended to operate in Illinois convert to the contour type. There was evidence which quite distinctly controverted the conclusion that the contour mudguards enhanced safety. In fact, some evidence showed that the contour guards created additional hazards.

It is important to note that the issue before the Court was whether the contour mudguard, in a comparative analysis to the straight mudguard, bore a reasonable relationship to the safety of the travelling public, not whether mudguards should be required at all.

Thus, the Court was faced with an issue which, although concerning safety, was not so much a policy decision as in

³¹ *Id.* at 523-24.

Barnwell, but a technical decision much more susceptible to exact and scientific analysis. The only economic factor to be considered by the Illinois legislature was the one-time installation cost of the contour guards for the Illinois-based carriers; this differed from the much more difficult legislative balancing in *Barnwell* of a continuing reduction in cargo capacity with safety considerations. The safety portion of the Illinois legislature's decision was one which could easily be proved right or wrong by comparative tests. On the other hand, the economic factor would be small in the minds of the Illinois legislature, but large in the minds of the Court which had to consider, not a one-time cost, but the far greater cost to interstate traffic of continual adaptation to the Illinois law. It is important that, in *Bibb*, no interstate traffic could travel without contour guards, an almost confiscatory result, while, in *Barnwell* and in this case, the impairment of interstate traffic is only in degree. As has been held, that sort of degree is directly proportional to an enhancement in highway safety.

The Commonwealth submits that the test which this Court has consistently applied in the instance of State regulations of traffic on highways for safety purposes is consistent with the approach it has applied in all other cases where State prerogatives burden commerce. *Cooley v. Board of Wardens*,³² established the basic concept by which local regulations effecting interstate commerce would be categorized in subject groups weighed according to the State interest involved, and then, evaluated in terms of their effect on interstate commerce. Since *Cooley* the Court has refined this method and held that the standard of review could be established only after the particular subject of State interest was weighed against the interests of interstate commerce. The re-

³² 53 U.S. (12 How.) 299 (1851).

sults of this balancing would then determine the degree of scrutiny and the difficulty of the test to which a challenged regulation would be subjected. Since that time, the Court has been called upon to examine many different types of local burdens upon interstate commerce and has attempted to delineate and compare the magnitude of the local interest as weighed against the national interest in the free flow of interstate commerce. The Commonwealth contends that the highway decisions previously enumerated embody this Court's current position in categorizing and evaluating the nature of the local interest in all areas, including safety on public highways. While new categories of State interest continue to be established, they do not implicitly change the status already accorded other categories; they represent merely a continuation of the trend begun in *Cooley*. It was through this method that highway safety was accorded the status of a compelling State interest, thus entitling State regulations in that regard to be measured by the rational basis test.

In essence, the appellants have contended that the recent decision of this Court in *Pike v. Bruce Church*,³³ has overruled, or represents a departure from, the method established in *Cooley* and followed through *Barnwell* and other decisions. The Commonwealth submits that this is not the case, and that, in fact, *Pike* is perfectly consistent with the *Cooley* method. The *Pike* regulation was designed to protect the reputation of the State of Arizona as a cantaloupe producing State. The Court found that the requirement that cantaloupes be packaged and labeled in Arizona, rather than in California as proposed by the grower, was a burden on interstate commerce. It reiterated the rule that a nondiscrimina-

³³ 397 U.S. 137 (1970).

³⁴ *Id.* at 142.

tory statute will be upheld "unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. *Huron Cement Co. v. Detroit*, 362 U.S. 440, 443."³⁴ In *Pike*, the Court found that the protection of Arizona's reputation as a cantaloupe producing State was a goal of minimal state interest.³⁵ It further established that "the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities."³⁶ Inasmuch as the interest of the State in the *Pike* case was minimal, it is natural that only a small permissible degree of burden was allowed. In *Pike*, the Court found that an enormous burden was being placed on the grower to protect only a minimal State interest and, thus, that the regulation was an unreasonable and unwarranted interference with interstate commerce. It is submitted that *Pike* is apposite only insofar as it demonstrates the *Cooley* method.

Thus, it would seem that *Pike* represents one of the more recent cases in a long and consistent line established by this Court, beginning with *Cooley*, which have attempted to establish a reciprocal ratio between, on one hand, the nature of the regulated State interest and, on the other, the difficulty of the test to be applied to the regulation designed to support that interest. We contend that the appellant is in error in assuming that the *Pike* standard postulates a pure balancing test in all cases without regard to precedentially established categories of State interest.

This proposal completely disregards the subjects of "peculiar state concern" which the Court has held are best evaluated by the legislatures which are constitutionally mandated

³⁵ *Id.* at 146.

³⁶ *Id.* at 142.

to make policy decisions by balancing competing interests. Apparently, the appellants would thus discard the "rational basis" test which has always been a corollary to the status of the peculiar State concern. To adopt this approach would resurrect the evils disavowed in *Sproles*, where the Court refused to sit as a "super legislature" in judgment of legislative policy decisions.

That this Court has no intention of doing this is illustrated by its decision in *Brotherhood of Loc. F. & E. v. Chicago, R.I. & Pac. R.R.*³⁷ In that case a challenge to an Arkansas railroad safety measure, the "full crew" law, was rejected. The law was challenged on the basis that certain crew members, originally required expressly for safety purposes, were no longer necessary for those purposes; thus it was argued that the law's burden on interstate commerce was constitutionally unjustifiable. The Court reiterated that that decision was not to be made on the basis of the preponderance of the evidence, but that, within the range of state interest previously accorded safety on railroads, the decision of the legislature was entitled to be judged by the rational basis test.³⁸ Safety as an area of important State interest, even to the detriment of interstate commerce, was upheld specifically and convincingly.

In light of the foregoing, the Commonwealth submits that the proper test for the evaluation of the Wisconsin statute is that of whether it bears a reasonable relationship to highway safety. This Court has previously dealt with cases involving almost identical issues, and size restrictions on motor vehicles have been consistently held to be directly related to the peculiar State interest in highway safety. This Court has repeat-

³⁷ 393 U.S. 1045 (1968).

³⁸ *Id.* at 138, 42.

edly stated that such laws will be upheld if they bear a rational relation to safety. The only tangible detriment adduced by the appellants is the inconvenience, and resulting cost, caused by the Wisconsin law; this Court has consistently held that such extra cost will not be sufficient to outweigh the putative local benefits of such regulations.³⁹

Accordingly, it is submitted that applicable precedent dictates the application of the "rational basis" test in this case and the consequent affirmation of the lower Court's decision.

IV

The Twin Trailer Restriction Is Premised On Sound Principles.

A. Safety

The prohibition in question is based on sound safety principles. Not only has the Wisconsin Legislature and Highway Commission deemed the prohibition to be necessary, but the three judges of the District Court found that appellants had not presented sufficient evidence to demonstrate that the statutes and regulations in question were not adapted to permissible safety goals.⁴⁰ To the contrary, the Court, acknowledges the problem of visual impairment created from the additional length of twin trailers.⁴¹ Due to the longer length, drivers of passing vehicles are subject to an additional obstruction of their vision. As the difference between the speeds of the passing vehicles and the twin trailers narrows,

³⁹ See, e.g., *Id.* at 140, quoting *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. at 526.

⁴⁰ *Raymond Motor Transp. Inc. v. Rice*, 417 F.Supp. 1352, 1359 (W.D. Wis. 1976).

⁴¹ *Id.*

the time of this impairment can be measurably increased. Moreover, the additional visual impairment may be extreme under adverse weather or traffic conditions. Having presented these specifics the Court then states:

This Court cannot conclude that prevention of added visual impairment or other similar safety considerations were not within the collective mind of the legislature and administrative bodies responsible for these regulations. Because such factors are indeed legitimate safety concerns, the Court must determine that the proscriptions in question do serve to implement various safety goals.⁴²

The lower court's specific reference to the various effects of visual impairment is not the only evidence in the record concerning questions of safety. For example, the weight of a vehicle has a direct bearing upon the severity of its impact potential in an accident.⁴³ Appellants readily admit that the reason they seek the abolishment of the twin trailer prohibition is so they can utilize such trailers to carry as much as one-third more goods and commodities on each trip. This request for larger trucks is especially distressing at a time when the nation is rapidly purchasing and driving smaller, more economical automobiles.

It is submitted also that the psychological impact of these trucks upon the average motorist is also a matter for legislative consideration. Because of their size, the twin trailer can intimidate and create a fear in the motorist. Such an intimidation can result in a motorist overreacting to emergencies or creating traffic congestion and its attendant hazards because of his uncertainty in approaching or passing such vehicles.

⁴² *Id.*

⁴³ (A. 146-47, 50-51).

The appellants argue that the jackknife potential is less, but they do not acknowledge that if a twin trailer does jackknife, its hazard potential is greater than that of a semi-trailer because of the larger area it will cover in such a mishap. The appellants further argue that the twin trailer's braking capacity is as good as a semi-trailer's but there is no evidence to reflect what weights the two types of trucks were carrying during the tests which appellants argue support their position. It is difficult to understand how a twin trailer carrying its average load is capable of being stopped as fast as a semi-trailer carrying its average load. The one-third additional weight in the twin trailer has to dictate a longer stopping distance.⁴⁴ Finally, the appellants argue that the splash and spray caused by the twin trailer is not as dense as that caused by the semi-trailer. It is submitted, however, that even if this is true, the motorist will be subjected to the splash and spray for a longer period of time when passing.

B. *Balancing Transportation Modes*

Appellants argue that because of the added volume of twin trailers, fewer vehicles will be required, resulting in a lessening of highway congestion and a significant fuel savings. It is possible that the Wisconsin Legislature does not agree with this theory and believes that because of the allegation concerning the twin trailers' more efficient operations and carrying capacity, truck transportation could take trade away from other modes of transportation, thereby, increasing road use. Wisconsin has a legitimate interest in "fostering a fair distribution of traffic to the end that all necessary facilities should be maintained and that the public should not

⁴⁴ (A. 126).

be inconvenienced by inordinate uses of its highways for purposes of gain."⁴⁵

C. *Wisconsin's Decision is Supported by Other States.*

The State of Wisconsin is not alone in its decision to prohibit twin trailers. Twelve other States and the District of Columbia prohibit such trailers; three additional ones prohibit twin trailers over 60 feet; and one State limits the length of all trailers to 60 feet.⁴⁶ The Commonwealth submits that the legislative decisions of seventeen States and the District of Columbia to prohibit 65 foot twin trailers cannot be easily disregarded. These governments are not yet convinced that it is in their citizens' best interests to be subjected to such a mode of transport. Whether they will change their positions in the future cannot now be predicted, but the Commonwealth asks that this Court refrain from displacing the legislative determinations of these bodies. If these policies are to be modified, let them be changed by the legislatures of the individual States and not by the courts acting in a legislative capacity.

V

There Is No Denial Of Equal Protection.

Although it is not express, appellants may contend that the Wisconsin twin trailer prohibition violates the Equal Protection Clause because exemptions to the State's general vehicle restrictions are authorized to permit the limited operation of certain oversized vehicles other than twin trailers. They also imply that the prohibition of twin trailers is unconstitutional because the evidence indicates that the

⁴⁵ *Sproles v. Binford*, 286 U.S. at 394.

⁴⁶ (A. 278).

operation of 65 foot long three-vehicle combinations is as safe as that of 55 foot semi-trailers. Thus, appellants complain that the Wisconsin law creates a classification which is both overbroad and underinclusive with respect to the problem of highway safety.

A. *Categorizing Classes And Providing Them Different Treatment Does Not Necessarily Violate The Equal Protection Clause.*

In speaking of vehicle regulations, this Court has stated: "There is no constitutional requirement that regulation must reach every class to which it might be applied—that the legislature must regulate all or none. *Silver v. Silver*, 280 U.S. 117, 123. The state is not bound to cover the whole field of possible abuses."⁴⁷ In *Sproles*, this Court upheld a weight restriction that differentiated between passenger busses and other types of vehicles even though a load of persons could damage the highways just as much as an equally heavy load of freight. Similarly, in *Railway Express Agency, Inc. v. New York*,⁴⁸ this Court held that although New York City saw fit to eliminate from traffic a certain kind of distraction but did not prohibit what "may be even greater ones in a different category, such as the vivid displays on Times Square, is immaterial. It is no requirement of equal protection that all evils of the same genus be eradicated or none at all."

Thus, it is clear that the legislature may categorize classes of vehicles differently, providing there exists some reasonable basis for distinguishing between the classes.

In the case at hand, the Wisconsin State Legislature has created limited exceptions to its general vehicle restrictions in an obvious effort to allow an increased use of the State's

⁴⁷ *Sproles v. Binford*, 286 U.S. at 396.

⁴⁸ 336 U.S. 106, 110 (1949).

highways. Twin trailers, however, have not been excluded in an unreasonable manner from any of these preferred categories. Consequently, the Wisconsin twin trailer prohibition does not deny appellants equal protection of the laws.

Wisconsin's general vehicle restrictions impose limitations for length at fifty-five feet,⁴⁹ for width at eight feet,⁵⁰ for height at thirteen and one-half feet,⁵¹ for weight at 73,000 pounds,⁵² and for the number of vehicles in combination at two vehicles.⁵³ Exceptions are created in those cases where, but for the relaxed restrictions, the vehicles or the loads in question might be completely excluded from the State. For example, the restrictions have been relaxed to permit the transport of oversized mobile homes,⁵⁴ overlength poles, pipes, and automobile carriers,⁵⁵ oversized implements of husbandry,⁵⁶ and other vehicles or loads "which cannot reasonably be divided or reduced to comply with statutory size, weight or load limitations"⁵⁷ These exceptions, in that they permit the operation of vehicles or transportation of loads upon the State's highways which could not otherwise comply with Wisconsin's vehicle restrictions, are manifestly reasonable. The rationale in *Sproles* is equally applicable to this case:

⁴⁹ Wis. Stat. § 348.07(1) (1975).

⁵⁰ *Id.* § 348.05(1).

⁵¹ *Id.* § 348.06(1).

⁵² *Id.* § 348.15(3) (d).

⁵³ *Id.* § 348.08(1).

⁵⁴ *Id.* §§ 348.07(2) (d), 348.26(4), 348.27(7).

⁵⁵ *Id.* § 348.27(5).

⁵⁶ *Id.* §§ 348.06(2) (a), 348.07(2) (e).

⁵⁷ *Id.* § 348.25(4).

We think that the exception, in the light of the context and of its apparent purpose, instead of being arbitrary relieves the limitation of an application which otherwise might itself be considered to be unreasonable with respect to the exceptional movements described.⁵⁸

Wisconsin's other exceptions are coterminous with the legislative power which was, likewise, recognized by this Court in *Sproles*:

[T]he Legislature in making its classifications was entitled to consider frequency and character of use and to adapt its regulations to the classes of operations, which by reason of their extensive as well as constant use of the highways brought about the conditions making the regulations necessary.⁵⁹

Accordingly, Wisconsin law permits such operations as overwide vehicles loaded with either bales of hay, tie logs, tie slabs, or veneer logs,⁶⁰ oversized vehicles driven in interplant operations,⁶¹ overweight vehicles transporting certain forest products during the winter months,⁶² and overweight vehicles carrying milk or fuel during periods of energy emergencies.⁶³ A review of these exceptions indicate that they have three important characteristics. First, the vehicles can be operated only temporarily or infrequently upon the highway. Second, even though highway use may not be infrequent, the average haul tends to be for relatively short distances. For example, an industrial inter-

⁵⁸ 286 U.S. at 392.

⁵⁹ *Id.* at 394.

⁶⁰ Wis. Stat. §§ 348.05(2) (k)-(l) (1975).

⁶¹ *Id.* § 348.27(4).

⁶² *Id.* § 348.175.

⁶³ *Id.* § 348.27(8).

plant permit was issued to American Motors to carry car bodies in trucks for a distance of forty-five miles.⁶⁴ Finally, the vehicle restrictions may be relaxed in certain circumstances when peculiar conditions may make the operation of an oversized vehicle more appropriate.

Although Wisconsin has created exceptions to its general vehicle restrictions, it also has recognized that the permission to operate oversized vehicles upon the State's highways will create additional safety hazards. As a result, the State has placed strict limitations upon the manner in which such vehicles will be allowed to use the highways. First, the exceptions based on character of highway use have been formulated so that the permitted vehicles will fall into one of the three categories discussed above. Because the operations of the vehicles in these classes generally are infrequent, temporary, or for short distances, the authorization of these types of vehicles uses naturally creates fewer safety hazards than would a much broader authorization. In addition, the legislature has created specific restrictions germane to many excepted categories. For example, overwidth loads of tie logs, tie slabs and veneer logs may not be transported upon Interstate Highways, may only be carried in single and tandem axle trucks, and "no part of the load shall extend more than 6 inches beyond the fender line on the left side of the vehicle or extend more than 10 inches beyond the fender line on the right side of the vehicle."⁶⁵ Overlength mobile homes may be transported only during certain hours of the day, and they cannot be hauled at all on weekends and holidays.⁶⁶ The legislature

⁶⁴ *Brief for appellants* at 19-20.

⁶⁵ Wis. Stat. § 348.05(2) (k) (1975).

⁶⁶ *Id.* § § 348.07(2) (d), 348.26(4), 349.27(7).

also empowers the permit authorities to impose such reasonable conditions to the granting of any permit as they deem necessary to promote safety upon the highways.⁶⁷ Thus, it is clear that the Wisconsin State Legislature did not create any exceptions to its general safety rules until it had developed a design which minimized highway safety hazards resulting from each exempted category.

Twin trailers were not arbitrarily excluded from any of the classes of vehicles granted exemptions. It is clear that they do not fall within the class of vehicles or loads which cannot reasonably be divided. A 65 foot twin trailer combination easily can be divided into two trailers, either of which can be pulled through or within the State. Also the logical and reasonable alternative to the twin trailers is the 55 foot semi-trailer which can, quite efficiently, carry conventional cargo on Wisconsin's highways.

Twin trailers cannot be justified, as can the other exemptions, on the basis that their use will be restricted. Appellants are not asking that they be authorized to operate the vehicles infrequently or temporarily; nor do they ask that they be permitted to transport twin trailers over relatively short distances or only during certain weather or emergency conditions. At a minimum, what the appellants request is an absolute and unhampered grant to transport their trailers upon the Interstate Highways and connecting roads throughout the State.⁶⁸ Such a broad grant of authority would exceed the scope of permission by which, as outlined above, the State Legislature has permitted the operation of other oversized vehicles. Moreover, an authorization to transport twin trailers upon Wisconsin's Interstate Highways would create an exemption to the State's general vehicle restric-

⁶⁷ *Id.* § 348.25(3).

⁶⁸ *Brief for appellants* at 45, 53.

tions which the legislature has not yet been convinced will be in the best interests of safety.

B. The Fact That 65 Foot Twin Trailers May Be Nearly As Safe As 55 Foot Semi-Trailers Does Not Make This Prohibition A Violation Of Equal Protection.

It is no violation of equal protection to prohibit the operation of twin trailers in Wisconsin even if there is evidence to indicate that 65 foot twin trailer combination vehicles can be operated nearly as safely as 55 foot semi-trailers. Obviously, some limit of length and number of vehicles in a combination must be enforced in Wisconsin, but the best length or vehicle combination is a debatable question. Appellants contend, however, that the State Legislature erred when, in promulgating its general vehicle restrictions, it limited combinations to two vehicles and established a maximum vehicle length of 55 feet. This Court has recognized, however:

Limitations of size and weight are manifestly subjects within the broad range of legislative discretion. To make scientific precision a criterion of constitutional power would be to subject the state to an intolerable supervision hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure.⁶⁹

This Court has often held that a regulatory statute is not invalid merely because it proscribes some innocent conduct; a legislature may include a reasonable margin of safety to insure effective enforcement of the dangerous activity.⁷⁰

⁶⁹ *Sproles v. Binford*, 286 U.S. at 388.

⁷⁰ See, e.g., *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388-89 (1926); *Hebe Co. v. Shaw*, 248 U.S. 297, 303 (1919).

The rationale of Justice Holmes best establishes the concept of reasoning that supports Wisconsin's length and vehicle combination restrictions:

When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the Legislature must be accepted unless we can say that it is very wide of any reasonable mark.⁷¹

CONCLUSION

For the reasons set forth in this Brief, the Commonwealth of Virginia requests this Court to affirm the District Court's decision. Wisconsin's statutory and regulatory scheme concerning trucks and the consequent prohibition of twin trailers is the exercise of sound legislative judgment in an area of peculiar local concern. There is no discrimination, no preemption, and the laws and regulations in question are

⁷¹ *Louisville Gas & Electric Co. v. Coleman*, 277 U.S. 32, 41 (1928) (dissenting opinion), quoted with approval in *Village of Belle Terre v. Boraas*, 416 U.S. 1, 8 n. 51 (1974).

reasonable, directed toward, and accomplish their objective in a rational manner.

Respectfully submitted,

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APPENDIX

Article I, Section 8, Clause 3 of the United States Constitution

"Section 8, The Congress shall have power . . . To regulate commerce . . . among the several states. . . ."

Amendment X of the United States Constitution

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Amendment XIV, Section 1 of the United States Constitution

"No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

Section 114(a) of Title 23 of the United States Code

"§ 114. Construction

(a) The construction of any highways or portions of highways located on a Federal-aid system shall be undertaken by the respective State highway departments or under their direct supervision. Except as provided in section 117 of this title, such construction shall be subject to the inspection and approval of the Secretary. The construction work and labor in each State shall be performed under the direct supervision of the State highway department and in accordance with the laws of that State and applicable Federal laws. Construction may be begun as soon as funds are available for expenditure pursuant to subsection (a) of section 118 of this title. After July 1, 1973, the State highway department shall not erect on any project where actual construction is in progress and visible to highway users any informational signs other than official traffic control devices conforming with standards developed by the Secretary of Transportation."

Section 116(a) of Title 23 of the United States Code

“§ 116. Maintenance

(a) It shall be the duty of the State highway department to maintain, or cause to be maintained, any project constructed under the provisions of this chapter or constructed under the provisions of prior Acts. The State's obligation to the United States to maintain any such project shall cease when it no longer constitutes a part of a Federal-aid system.”

Section 145 of Title 23 of the United States Code

“§ 145. Federal-State relationship

The authorization of the appropriation of Federal funds or their availability for expenditure under this chapter shall in no way infringe on the sovereign rights of the States to determine which projects shall be federally financed. The provisions of this chapter provide for a federally assisted State program.”

Section 46.1-330, Code of Virginia (1950), as amended

“§ 46.1-330. Length of vehicles; generally; special permits; buses with safety bumpers.—No motor vehicle exceeding a length of forty feet shall be operated upon a highway of this State. The actual length of any combination of vehicles coupled together including any load thereon shall not exceed a total of fifty-five feet; and no tolerance shall be allowed that exceeds twelve inches. Provided, however, that the State Highway and Transportation Commission when good cause is shown, may issue a special permit for combinations in excess of fifty-five feet including any load thereon where the object or objects to be carried cannot be moved otherwise; and passenger buses in excess of

thirty-five feet, but not exceeding forty feet, may be operated on the streets of incorporated cities and towns when authorized pursuant to § 46.1-180; and provided further, that vehicles designed and used exclusively for the transportation of motor vehicles may have an additional load overhang not to exceed five feet; and provided further, that passenger buses may exceed the forty-foot limitation when such excess length is caused by the projection of a front safety bumper or a rear safety bumper or both. Such safety bumper shall not cause the length of the bus to exceed the maximum legal limit by more than one foot in the front and one foot in the rear. “Safety bumper” means any device which may be fitted on an existing bumper or which replaces the bumper and is so constructed, treated or manufactured so it absorbs energy upon impact.”

Section 46.1-335, Code of Virginia (1950), as amended

“§ 46.1-335. Vehicles having more than one trailer, etc., attached thereto.—No motor vehicle shall be driven upon a highway drawing or having attached thereto more than one motor vehicle, trailer or semitrailer unless such vehicle is being operated under a special permit from the State Highway Commission, but this limitation shall not apply between sunrise and sunset to such farm trailers or semitrailers being moved from one farm to another farm owned or operated by the same person within a radius of ten miles, provided that this limitation shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a drive-away service from factory to dealer when not more than two saddle mounts are used or when three saddle mounts are used not exceeding sixty feet in length when such motor vehicle is being operated on the interstate system of

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highways or is enroute from its point of departure to the interstate system of highways, and such use is in conformity with safety regulations adopted by the Superintendent of State Police; provided, further, however, that in the cities of this Commonwealth, the councils may, in their discretion, by general ordinance, permit motor vehicles to be driven upon streets of their respective cities drawing or having attached thereto more than one other vehicle, trailer or semitrailer."

Pertinent Text of Wisconsin Statutes (1975)

"348.05 Width of vehicles. (1) No person without a permit therefor, shall operate on a highway any vehicle having a total width in excess of 8 feet, except as otherwise provided in this section.

(2) The following vehicles may be operated without a permit for excessive width if the total outside width does not exceed the indicated limitation:

.....

(k) 9 feet for loads of tie logs, tie slabs and veneer logs, provided that no part of the load shall extend more than 6 inches beyond the fender line on the left side of the vehicle or extend more than 10 inches beyond the fender line on the right side of the vehicle. The term "fender line" as used herein means as defined in s. 348.09. This paragraph shall not be applicable to transport on highways designated as parts of the national system of interstate and defense highways pursuant to s. 84.29. The exemptions provided by this paragraph shall apply only to single and tandem axle trucks.

(l) Ten feet for loads of hay in bales from the point of production to drying or milling plants or farms if the size

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of the bales is not more than 5 feet in length and not more than 6 feet in diameter. This paragraph shall not be applicable to transport on highways designated as parts of the national system of interstate and defense highways under § 84.29.

"348.06 Height of vehicles. (1) No person, without a permit therefor, shall operate on a highway any motor vehicle, mobile home, trailer or semitrailer having an over-all height in excess of 13½ feet, except as otherwise provided in sub. (2).

(2) The following vehicles may be operated without a permit for excessive height if the over-all height does not exceed the indicated limitations:

(a) No limitation for implements of husbandry temporarily operated upon a highway;

.....

"348.07 Length of vehicles. (1) No person, without a permit therefor, shall operate on a highway any single vehicle with an over-all length in excess of 35 feet or any combination of 2 vehicles with an over-all length in excess of 55 feet, except as otherwise provided in subs. (2) and (2a).

(2) The following vehicles may be operated without a permit for excessive length if the over-all length does not exceed the indicated limitations:

.....

(d) 60 feet for a combination of mobile home and towing vehicle, except that no mobile home and towing vehicle having a combined length in excess of 50 feet shall be operated during the hours of 12 m. to 12 p.m. on Sundays,

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New Year's, Memorial, Independence, Labor, Thanksgiving and Christmas days;

(e) No limitation for implements of husbandry temporarily operated upon a highway;

.....

"348.08 Vehicle trains. (1) No person, without a permit therefor shall operate on a highway any motor vehicle drawing or having attached thereto more than one vehicle. . . .

"348.15 Weight limitations on class "A" highways. (1) In this section:

.....

(3) For enforcement purposes only and in recognition of the possibility of increased weight on a particular wheel or axle or group of axles due to practical operating problems, including but not limited to accumulation of snow, ice, mud or dirt, the use of tire chains or minor shifting of load, no summons or complaint shall be issued, served or enforced under sub. (2) unless:

.....

(d) The gross weight imposed on the highway by all axles of a vehicle or combination of vehicles exceeds 73,000 pounds.

"348.175 Seasonal operation of vehicles hauling peeled or unpeeled forest products cut crosswise. The transportation of peeled or unpeeled forest products cut crosswise in excess of gross weight limitations under s. 348.15 shall be permitted during the winter months when the highways are so frozen that no damage may result thereto by reason of such transportation. If at any time any person is so

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transporting such products upon a class "A" highway in such frozen condition then he may likewise use a class "B" highway without other limitation, except that chains and other traction devices are prohibited on class "A" highways but such chains and devices may be used in cases of necessity. . . .

"348.25 General provisions relating to permits for vehicles and loads of excessive size and weight.

.....

(3) The highway commission shall prescribe forms for applications for all single trip permits the granting of which is authorized by s. 348.26 and for those annual or multiple trip permits the granting of which is authorized by s. 348.27 (2) and (4) to (7m). The commission may impose such reasonable conditions prerequisite to the granting of any permit authorized by s. 348.26 or 348.27 and adopt such reasonable rules for the operation of a permittee thereunder as it deems necessary for the safety of travel and protection of the highways. Local officials granting permits may impose such additional reasonable conditions as they deem necessary in view of local conditions.

(4) Except as provided under s. 348.27 (7m), permits shall be issued only for the transporting of a single article or vehicle which exceeds statutory size, weight or load limitations and which cannot reasonably be divided or reduced to comply with statutory size, weight or load limitation. . . .

"348.26 Single trip permits. . . .

(4) **MOBILE HOME PERMITS.** Single trip permits for the movement of oversize mobile homes may be issued only by the highway commission, regardless of the highways to be

used. Every such permit shall designate the route to be used by the permittee and shall authorize use of the highways only between sunrise and sunset on days other than Saturdays, Sundays and holidays.

"348.27 Annual or multiple trip permits. . . .

(4) **INDUSTRIAL INTERPLANT PERMITS.** The highway commission may issue, to industries and to their agent motor carriers owning and operating oversize vehicles in connection with interplant, and from plant to state line, operations in this state, annual permits for the operation of such vehicles over designated routes, provided that such permit shall not be issued under this section to agent motor carriers or from plant to state line for vehicles or loads of width exceeding 96 inches upon routes of the national system of interstate and defense highways. If the routes desired to be used by the applicant involve city or village streets or county or town highways, the application shall be accompanied by a written statement of route approval by the officer in charge of maintenance of the highway in question. A separate permit is required for each oversize vehicle to be operated.

(5) **POLE, PIPE AND VEHICLE TRANSPORTATION PERMITS.** Except as further provided in this subsection, the highway commission may issue an annual permit to pipeline companies or operators or public service corporations for transportation of poles, pipe, girders and similar materials and to companies and individuals hauling peeled or unpeeled pole-length forest products used in its business and to auto carriers operating "haulaways" specially constructed to transport motor vehicles and which exceed the maximum limitations on length of vehicle and load imposed by this chapter. Such permits issued to auto carriers and to com-

panies and individuals hauling peeled or unpeeled pole-length forest products shall limit the length of vehicle and load to a maximum of 10 feet in excess of the limitations in s. 348.07(1) and shall be valid only on a class "A" highway as defined in s. 348.15(1) (b). Permits issued to companies or individuals hauling pole-length forest products may not exempt such companies or individuals from the maximum limitations on vehicle load imposed by this chapter.

. . . .

(7) **MOBILE HOME PERMITS.** The highway commission may issue annual statewide permits to licensed mobile home transport companies and to licensed mobile home manufacturers and dealers authorizing them to transport oversize mobile homes over any of the highways of the state in the ordinary course of their business. Every such permit shall authorize use of the highways only between sunrise and sunset on days other than Saturdays, Sundays and holidays.

. . . .

(8) **EMERGENCY ENERGY CONSERVATION PERMITS.** During an energy emergency, the highway commission may waive the divisible load limitation of s. 348.25(4) and issue permits valid for a period not to exceed 30 days for overweight vehicles carrying energy resources or fuel or milk commodities designated by the governor or his designee, regardless of the highways involved, to conserve energy. Such permits may only allow weights not more than 10% greater than the gross axle and axle combination weight limitations, and not more than 15% greater than the gross vehicle weight limitations under ss. 348.15 and 348.16. No permit issued under this subsection is valid unless the overweight vehicle is registered under ch. 341 for the maximum gross weight allowed by the permit and the department of transportation

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has been paid a permit fee of \$10 per 1,000 pounds or fraction thereof for the amount by which such maximum gross weight exceeds 73,000 pounds. Nothing in this subsection shall be construed to permit the highway commission to waive the requirements of s. 348.07."